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IN THE

SUPREME COURT
OF THE
UNITED STATES

CHARLOTTE SPADARO, Petitioner,

v.

CITY OF RIALTO, CALIFORNIA, Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of California

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS OF THE CASE

On what grounds may the government deprive its citizens of their property?

If the United States Constitution requires the States to provide notice and a hearing on the deprivation of someone's property, what then must be considered and decided at such a hearing, and what discretion do the states have to limit and vary the hearings they provide on federal issues, while still preserving due process and equal protection?

What fundamental requisites of due process does the Constitution guarantee all citizens anywhere in the United States, as a national standard of justice?

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OPINIONS BELOW

The Supreme Court of California, Case No. S154863, on August 29, 2007, denied review (Appendix A) of the decision of the Court of Appeal of the State of California, Fourth Appellate District, Division Two, Case No. E040748, of June 18, 2007 (Appendix B).

JURISDICTION

The decision of the California Courts was final upon denial of review by the Supreme Court of California, entered on August 29, 2007.

The jurisdiction of this Court is invoked pursuant to United States Code Title 28, Section 1257 (a), as the present case involves issues under the Constitution of the United States.

STATUTE INVOLVED

This case involves California Penal Code Section 597.1 (Appendix C).

United States Code Title 28, Section 2403 (b), may apply, and the Attorney General of California is notified of this petition, and not prior by any Court in the present case.

STATEMENT OF THE CASE

I. Background

a. At Issue

Fundamental to our concept of freedom is the right of each person to have property and not be deprived of that property by the government without due process. The issue of what rights our Constitution guarantees has been addressed by the Courts throughout the history of our democracy, yet the specifics of just how these rights are protected present ongoing questions for the Courts.

This case is about the practical application of due process, about the grounds upon which the government may deprive its citizens of their property, and what is considered and decided at the hearing on deprivation.

The reality is that different individuals are being provided substantially different types of hearings, with differing levels of adjudication, for different incidents of deprivation, and the State Courts are allowing these disparities.

The decisions of the State Courts conflict with one another and they conflict with the prevailing decisions of the United States Supreme Court.

The State Courts are explicitly allowing hearings, for certain incidents, which provide only a partial adjudication for deprivation of property with no full adjudication ever to follow.

Different States may enact differing laws, but when any State deprives a United States citizen of his or her property, the State impacts a right that is federal, that is guaranteed and governed by the federal Constitution in the Fourteenth Amendment which bars any State from depriving anyone of life, liberty, or property without due process of law.

On this federal issue of deprivation of property, some people will be provided a full hearing as to whether or not the seizure of property was actually necessary, but other people will be provided only a probable cause hearing as to whether or not the seizing officer reasonably believed that the seizure of property was necessary, in his own mind at the time that he seized.

And, these people will never get any further hearing to determine whether or not the officer may have been mistaken or overzealous, and whether or not the seizure was actually necessary, in light of all the evidence and defenses the person provides.

So, for issues involving deprivation due to alleged wrongdoing by an individual, deciding the appearance of wrongdoing may prevail over deciding any actual wrongdoing.

A finding of probable cause may satisfy the Fourth Amendment but not the Fourteenth Amendment. A seizure may be reasonable so as to bring someone to hearing, as an arrest may be reasonable to bring someone to trial. But probable cause is not sufficient to deprive someone of property, just as probable cause is not sufficient to convict someone and deprive someone of liberty.

The Constitution requires that no person be deprived of life, liberty or property without due process of law. The United States does not allow for people to be deprived of life or liberty upon a hearing of mere probable cause, but only upon a full adjudicative hearing. The right to property should be protected with no lesser standard, for these rights are interdependent.

> "The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a 'personal' right ... In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized." *Lynch v. Household Finance* 405 US 538 (1972)

Should the United States allow people to be deprived of property upon a hearing of mere probable cause? The reality today is that some States do.

Furthermore, the reality today is that arbitrary parameters determine which people will be provided a full hearing and which people will be provided only a probable cause hearing.

The Constitution of the United States guarantees due process of law for those deprived of property. The Supreme Court of the United States has determined that notice and a hearing are requisites of such due process. What consideration and adjudication must such a Constitutionally

guaranteed hearing provide each citizen? To what extent may due process vary from hearing to hearing, from statute to statute, from State to State, when these are federally guaranteed hearings?

Each and every citizen, in any State of our nation, is equally entitled to the rights of the Constitution. Hearings on deprivation are the Constitutional right of each citizen. What minimum process is due all? To what extent does the Constitution require that all hearings on deprivation conform to a national standard of justice?

We will argue that a probable cause hearing is not enough for deprivation of property and that a probable cause hearing alone is partial justice and that partial justice is justice denied.

We will argue that deprivation merely for apparent wrongdoing conflicts with our fundamental presumption of innocence.

We will discuss how much of what citizens face today with such disparate standards for hearings on the same federal topic may be attributed to confusion between the Fourth Amendment and the Fourteenth Amendment.

b. Constitutional Due Process

The United States Constitution guarantees in the Fourteenth Amendment that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The present case happens to involve a person's animals.

The Declaration of Independence recognized as unalienable the rights to "Life, Liberty and the pursuit of Happiness".

The United States Constitution reiterated these as "life, liberty, or property".

"Rights to life, liberty, and the pursuit of happiness are equivalent to rights of life, liberty, and property" *In re Slaughter-House Cases* 83 US 36 (1872).

So, while those of us with animals may choose to describe our animals more as our "pursuit of happiness" and less as our "property", under the law these are the same.

"A dog is an 'effect' or 'property' which can be seized" *Fuller v. Vines* 36 F. 3d 65 (9th Circuit, 1994).

Thus, someone's animal may not be seized without due process of law.

The United States Supreme Court has found in cases like *Fuentes v. Shevin* 407 US 67 (1972) that deprivation requires notice and a hearing. A postseizure hearing may be held if the seizure is thought to be urgently needed.

This Court, in *Fuentes*, supra, allowed for variations in the type of prior hearing so long as that prior hearing comes "before a final judgment". The prior hearing may test "the validity, or at least the

probable validity, of the underlying claim". What we present in this petition are not the reasonable variations among prior hearings, or probable cause hearings, pending final hearings which offer the "final judgment". What we present in this petition is the reality of the States providing only probable cause hearings and never providing any final hearings or "final judgment" on the merits.

c. Context: Variations among the States on a Federal Question

Constitutional due process must have certain minimums, which are not subject to variation from statute to statute or from State to State.

In discussing the different types of hearings different States are providing people for deprivation of their property, we are not examining what may be different choices that different States may rightfully make. We are, instead, showing how some States are, in certain instances, coming between people and their rightful, minimum due process under the federal Constitution, how states are arbitrarily modifying and limiting people's federally guaranteed minimum due process.

We will first discuss herein just a very brief sampling of such disparities among the States, with the question in mind of whether some of these hearing processes constitute a violation of due process, and among them, a violation of equal protection, with different citizens of the United States receiving substantially different hearing processes for similar circumstances.

Our sampling of these disparities is for context, to show what people are facing today, to show the need and opportunity for a decision which brings the States into compliance with the federal Constitution. Our sampling contributes to but it does not necessarily constitute our grounds for review under the rules of this Court.

California

For California to deprive someone of one's crops, California must provide a hearing on the merits of the taking and must bear the burden of proof on all issues, and the State must provide a neutral judicial officer, according to *Menefee and Son v Department of Food and Agriculture* 199 Cal App 3d 774 (1988).

And, for California to deprive someone of an allegedly dangerous or vicious dog, California may seize upon probable cause but may only deprive someone of the dog and find someone liable for the costs of seizure "if the dog is later adjudicated potentially dangerous or vicious" by a "preponderance of the evidence", under California Food and Agriculture Code Sections 31621 through 31646. The California Court found, in *Phillips v. San Luis Obispo County Department of Animal Regulation* 183 Cal App 3d 372 (1986), that an alleged vicious dog shall not be lost to the government "unless there is need for prompt government action", citing *Fuentes v. Shevin*, supra.

But, under the decision below which we appeal, for California to deprive someone of animals and/or the costs of seizure upon an allegation of a

failure to care for those animals, California need only provide a hearing as to probable cause, as to the reasonable belief of the seizing officer, with no further adjudication ever provided as to whether or not the animals actually suffered from a failure to care, or as to whether or not the seizure was actually necessary.

The statute for the seizure of animals, Penal Code Section 597.1 provides not the neutral judicial officer one is entitled to for hearings about crops, but rather it allows the seizing agency to use its own employee as the hearing officer.

The Fourteenth Amendment makes no distinctions which would permit California to provide full hearing processes for crops seized and partial hearing processes for animals seized. Yet, the reality in California today is that people with different types of property seized will receive substantially different processes, such that one person will be provided a full hearing on the merits, and another will be provided only a probable cause hearing and never a full hearing on the merits.

The Fourteenth Amendment makes no distinctions which would permit California to provide a full adjudicative hearing upon the seizure of an animal when the animal is alleged vicious yet provide only a probable cause hearing and never a full hearing on the merits when an animal is alleged sick.

Texas

On June 3, 2005, the ABC News program "20/20" aired a segment by John Stossel about local SPCA's, Societies for the Prevention of Cruelty to Animals, whose officers act under State authority as ancillary State animal control officers.

The segment questioned the appropriateness of some seizures by SPCA's, and raised the possibility that some officers may possibly be mistaken or overzealous and that the accused animal owners may not be the criminals that the officers would portray them as. The segment raised the issue of how local SPCA's may have a financial incentive to seize people's animals.

Viewers of the segment may disagree as to whether the seizures documented were appropriate or inappropriate, and as to whether or not the animals shown were actually neglected. But, the segment is notable for the questions it raised.

The segment concentrated on concerns over seizures in Texas, but, actually, the law in Texas is in some ways more favorable to animal owners than the law in California, as it has been construed by the California Court below in the decision we appeal.

In Texas, under Health and Safety Code Sections 821.022 and 821.023, officers may seize upon probable cause but the owner would only lose the animal or be responsible for the costs of seizure "if the court finds that the animal's owner cruelly treated the animals". Upheld, *Hoog v. State of Texas*

87 SW 3d 740 (Texas Court of Appeals, Fourth District, 2002).

Where California, under the decision we appeal, provides only a probable cause hearing with no further hearing provided to determine actual wrongdoing, Texas provides a hearing to determine not merely probable cause, but whether the owner actually violated the law.

But, the Texas law does have its own particularly controversial provision, as that segment pointed out. Under Health and Safety Code Section 821.025, some animal owners can appeal the decision of their hearing, while some animal owners cannot appeal, based only upon what the judge has decided the animal's fate will be, and not based on anything the owner may have done. The ban on appeals was upheld in *Pitts v. State of Texas* 918 SW 2d 4 (Texas Court of Appeals, Fourteenth District, 1995).

Under that Texas law, the individual can appeal only once to county Court in cases when the judge rules that the animal will be sold at auction. The individual cannot appeal at all in cases when the judge rules that the animal will be given to a nonprofit shelter or to a pound or to an SPCA or if the judge rules that the animal will be destroyed. Contrary to the equal protection provision of the Fourteenth Amendment, different people similarly situated will receive different levels of justice, based on no fault of their own, based only on the whim of the Court.

A transcript of the ABC News segment is included as Appendix D.

Florida

In Florida, under *Brinkley v. County of Flagler* 769 So 2d 468 (Florida Court of Appeals, Fifth District, 2000), the individual is due "a full hearing before a court having jurisdiction of the matter, the right to introduce evidence at a meaningful time and in a meaningful manner, and judicial findings based upon that evidence" and the seizing agency must provide "proof of lack of care".

The California decision we appeal directly conflicts with this Florida decision. Those in California, under the decision we appeal, will be provided only a probable cause hearing and nothing more. Those in Florida will be provided a full hearing to actually determine whether there is "proof of lack of care". Yet United States citizens, whether in California or Florida, are all entitled to the same protections under the federal Constitution for the deprivation of their property, a federal issue of great significance.

New York

In New York, under Agriculture and Markets Law Section 373, the seizing agency must prove at hearing by a preponderance of the evidence that the person from whom the animal was seized violated a provision of the animal cruelty law. Upheld, *People v. Garcia* 777 NYS 2d 846 (2004), and *Mohawk and Hudson River Humane Society v. Dominick Cubello* 4 Misc 3d 1018 (A) (New York Justice Court, 2004).

The California decision we appeal from also directly conflicts with this New York procedure.

Delaware

Lest we give the impression that the California decision we appeal is an anomaly, we turn to Delaware.

In *State (of Delaware) v. Sego*, 2006 WL 3734664 (Delaware Court of Common Pleas, 2006), the Delaware Court considered a case involving an individual who ultimately pleaded guilty to animal cruelty charges. But, the Court's decision was explicit that the guilty status was immaterial to their decision.

They found that, in Delaware, the SPCA is entitled to costs of seizure on probable cause alone, notwithstanding the final disposition of the criminal charges.

We exhibit their decision as Appendix E.

Thus, the California decision we appeal is not alone in holding people liable merely on a hearing of probable cause.

Laws and decisions in States like California and Delaware conflict with laws and decisions in States like Texas and Florida. Some United States citizens will be provided the full due process the Constitution guarantees and others will only be provided partial due process.

This is a national schism, which may be due to a national confusion, as we will discuss. A clear

decision of this Court would end this national conflict.

d. Conflicts between Courts Below and the United States Supreme Court

We have shown that different States will provide dramatically different hearing processes for similar circumstances, even though all these citizens are guaranteed due process by the United States Constitution.

We will discuss how the United States Supreme Court has held that a hearing on deprivation must be a full adjudication, so a hearing of probable cause is just not enough

II. Proceedings Below

On May 12, 2005, the City of Rialto, California, seized all of the animals from Petitioner's kennel, including personal pets. Petitioner fronted the costs of seizure and Rialto granted Petitioner a post seizure hearing. The hearing officer stated that he would only be deciding whether the seizing officer had a reasonable belief that he should seize the animals, based on what the seizing officer saw that morning.

The seizing officer testified that he saw a couple of sick dogs, so he seized them along with the rest of the animals.

Petitioner presented veterinary testimony that these dogs had just been treated by a veterinarian.

They had been sent home to convalesce. Petitioner provided further veterinary testimony that her other animals were also under proper veterinary supervision, and that the conditions of the kennel itself were normal and not any threat to the animals.

The veterinarian the city hired to make its case against Petitioner instead testified favorably for Petitioner, stating that the condition of the animals was "good", that they seemed to be in "good nutritional condition", that "their coats were clear, shiny", that they showed no signs of abuse or cruel treatment or malnutrition or deprivation of water. (Record of the Case: Transcript of Proceedings, Vol. I, pages 33-34 and 59-60)

Ultimately, four veterinarians provided supportive testimony for Petitioner, and no veterinary testimony was provided to contradict these four experts.

The hearing officer returned Petitioner's animals to her, but still found Petitioner liable for the costs of seizure, $28,344.84 (for seizing and housing numerous animals from Petitioner's kennel for nearly three weeks pending the hearing).

The hearing officer explicitly stated that he was making a decision based only on what the seizing officer believed when the seizing officer entered the kennel.

Because the dogs looked sick to the seizing officer, Petitioner would have to pay the city for the costs of seizure.

It did not matter that the dogs had just come home from the veterinarian, and were already under proper treatment. It did not matter that they were not actually in need of urgent care.

According to the hearing officer, it did not matter whether the seizure was actually necessary, only whether the seizing officer believed that the seizure was necessary.

The hearing officer based his method on his reading of the statute the city used to seize the animals, California Penal Code section 597.1, which states, under subsection (f) (4):

> "The agency, department, or society employing the person who directed the seizure shall be responsible for the costs incurred for caring and treating the animal, if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds to believe very prompt action, including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal..."

The statute is vague, speaking to the same test as one of determining "reasonable grounds" from one angle and as to determining if the seizure was "justified" from the other angle.

We have argued that the term "justified" means necessary, as in "necessary and justified" (*Fuentes v. Shevin*, supra). Unless we are found to have been correct and the statute shall thus forth be construed as we have argued, then we submit that the statute is insufficient to satisfy the United States Constitution, as providing merely a hearing of reasonable grounds rather than a full hearing as to the actual necessity of the seizure. The statute indeed fails to mention any test of whether the seizure was "justified" in its subsection (g) (4), for preseizure hearings, and, we submit that the statute there is certainly insufficient to satisfy the Constitution, because there is no provision for that reasonable grounds hearing to ever be followed up by any further hearing on the merits. Some may be criminally charged and tried under the section, while others will never be.

The hearing officer stated, in his order, "The issue for the hearing officer in this case is to determine whether the officers in this case had a reasonable belief that prompt action was required to protect the health or safety of an animal or animals and the health or safety of others." (Record of the Case: Transcript of Proceedings, Vol. II, page 611)

Petitioner argued all along that due process, guaranteed by the federal Constitution, requires a hearing as to whether Petitioner actually failed to care for the animals or not, beyond a hearing of what the seizing officer himself believed when he seized.

The California Superior Court held that the hearing officer could rule as he did.

The California Court of Appeal held that the hearing officer could rule as he did, stating:

> "Here, the language (of the statute) is unambiguous and clearly reflects an intention to permit seizure and impoundment of an animal if the officer reasonably believes that the action is necessary to protect the animal, followed by a hearing to determine the validity of that belief.
>
> (Petitioner) contends that section 597.1 fails to afford constitutionally adequate due process unless it provides for a hearing in which it is determined whether the animal's actual condition justified seizure and impoundment, as opposed to reasonableness of the officer's belief that seizure was necessary to protect the animal's health or safety. We disagree. Procedural due process is satisfied by affording the owner or keeper of the animal notice and an opportunity to be heard on the validity of the seizure of the animal, with provision for return of the animal if the seizure was not justified."

Their decision was that procedural due process is satisfied by a hearing on reasonable belief of the seizing officer and not on the actual condition of the animals or whether or not the seizure was actually necessary.

Elsewhere in their decision, the Court equated the concepts of the officer's reasonable belief and the

validity of the seizure and whether the seizure was justified.

The California Supreme Court denied review.

Thus, Petitioner was found liable for the costs of seizure, $28,344.84, with no finding that Petitioner had ever committed any wrongdoing, with no finding that the seizure of Petitioner's animals was actually necessary.

Petitioner has never been found guilty of any crime involving any animal ever. If Petitioner were to be found guilty of failing to care for these animals, the statute in this case provides that the seizing agency would still get the money. They can get it from the hearing officer or they can get it as the result of a criminal conviction.

The hearing officer returned all of Petitioner's animals, but only for the payment of $28,344.84, the costs of seizure demanded by the city. If this sum had not been paid, the city could have disposed of these animals.

The hearing officer found that Petitioner was liable to the city for these costs. So, if this sum had not been paid, Petitioner would still be liable for it whether she had fronted it or not, and the city could place a lien on Petitioner's home, for example, to satisfy the liability determined.

The seizure took Petitioner's animals and Petitioner was able to retrieve her animals only by essentially buying them back. So, the property that the hearing officer ultimately deprived Petitioner of

was the $28,344.84, in exchange for the animals. Clearly, Petitioner had a fundamental property right to her money.

If Petitioner had not paid this sum, Petitioner would have been permanently deprived of her animals. Once the hearing officer found Petitioner liable for the costs of seizure, it would have been one deprivation or the other.

Petitioner was the subject of false and outrageous claims by Respondent throughout the proceedings, including references by Respondent to outside reports which were never themselves submitted. By reference to such outside reports, without submitting them to show what they actually included, Respondent was able to cast Petitioner in a false light. While Petitioner refutes the misinformation, this petition is not about a dispute over evidence. This petition is about Constitutional protections and what the California Courts and other Courts have decided about the nature of hearings on deprivation.

REASONS FOR GRANTING THE PETITION

I. Decision Below Contrary to Other Decisions Below

Under Rule 10 (b) of the Supreme Court of the United States, cases subject to review by writ of certiorari include those in which a State Court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort.

The California decision we appeal allows permanent deprivation of animals and/or money upon a finding of probable cause alone and it conflicts with the decisions of the Courts of other States, such as Texas, Florida, and New York, which require a full hearing as to actual wrongdoing beyond mere probable cause, as we have discussed above.

The important federal question at issue in all of these State cases is that of Constitutional due process and equal protection, guaranteed for all citizens of the United States, for deprivation of one's property, as discussed above.

II. Decision Below Contrary to Decisions of United States Supreme Court

Under Rule 10 (c) of the Supreme Court of the United States, cases subject to review by writ of certiorari include those in which a State Court has decided an important question of federal law that has not been, but should be, settled by the Supreme Court of the United States, or has decided an important federal question in a way that conflicts with relevant decisions of the Supreme Court of the United States.

The decision we appeal, like the decision we cite from Delaware, provides only a probable cause hearing on deprivation, and nothing further.

The United States Supreme Court has held that hearings on deprivation must be full adjudications and must be provided by the

government, so a probable cause hearing is just not enough.

The important federal question at issue is that of Constitutional due process and equal protection for deprivation of one's property,

We turn now to just some of these decisions of the United States Supreme Court.

Merits of the Seizure

> "The central meaning of procedural due process has been clear: 'parties whose rights are to be affected are entitled to be heard...' ... the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner'" and the Court has not held "that this most basic due process requirement is limited to the protection of only a few types of property interests". *Fuentes v. Shevin*, supra.
>
> The hearing must provide the "opportunity to contest the actual claims" *Morgan v. United States* 304 US 1 (1938).
>
> The hearing must be "consistent with the essentials of a fair trial" *Railroad Commission of California v. Pacific Gas and Electric Co.* 302 US 388 (1938).
>
> The hearing must provide "an opportunity to be heard respecting the justice of the judgment sought" *Hagar v. Reclamation District* 111 US 701 (1884).

Necessity of the Seizure

In each case where the Court has allowed seizure without prior hearing, "the seizure has been directly necessary" and "there has been a special need for very prompt action" and the seizure was "necessary and justified" *Fuentes v. Shevin*, supra.

A Hearing to Prevent Erroneous Deprivation

The hearing on deprivation is "to minimize substantively unfair or mistaken deprivations of property" *Fuentes v. Shevin*, supra.

"The statutory 'fair hearing' will provide the recipient with a full administrative review" and shall determine if the property was "erroneously withheld" and shall provide the "opportunity to show that" the government's claim "is untrue" *Goldberg v. Kelly* 397 US 254 (1970).

The hearing shall be designed for "concluding that the facts justifying the official action are as the responsible governmental official warrants them to be" *Mackey v. Montrym* 443 US 13 (1979).

A Hearing of All Defenses

"Due process requires that a person "has had sufficient notice and adequate opportunity has been afforded him to defend"

Louisville & N.R. Co. v. Schmidt 177 US 230 (1900).

The hearing must be the property owner's opportunity "as to all questions for which his liability depended" *Coe v. Armour Fertilizer Works* 237 US 413 (1915).

The hearing shall be one's "opportunity to be heard and to tender any defense he may have" *Sniadach v. Family Finance Corp.* 395 US 337 (1969).

The hearing must provide an opportunity to present one's "defense" and "to offer evidence in explanation or rebuttal" *Interstate Commerce Commission v. Louisville & N.R. Co.* 227 US 88 (1913).

The hearing must consider "all questions of fact", "embracing whatever right of refund the claimant is entitled to assert under the Federal Constitution" *Anniston Manufacturing Co. v. Davis* 301 US 337 (1937).

The "right to a meaningful opportunity to be heard within the limits of practicality must be protected against denial by particular laws that operate to jeopardize it for particular individuals" *Boddie v. Connecticut* 401 US 371 (1971).

A Full Hearing Provided by the Government

Due process allows seizure without a prior hearing under "the assumption that at some

time a full and meaningful hearing will be available" *Parratt v. Taylor* 451 US 527 (1981).

"A preliminary decision by an agency is a step" which must be followed by "the requisite hearing" to be "held before the final administrative order becomes effective" *Ewing v. Mytinger and Casselberry* 339 US 594 (1950).

Summary seizure is permitted for "probable cause" only "so long as the requisite hearing is held before the final administrative order becomes effective" and "that there is at some stage an opportunity for a hearing and a judicial determination" *Mitchell v. W.T. Grant Co.* 416 US 600 (1974).

Due process is not violated "if a meaningful post-deprivation remedy for the loss is available" *Hudson v, Palmer* 468 US 517 (1984).

The "postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate" *Parratt v. Taylor*, supra.

"The law itself must save the parties' rights and not leave them to the discretion of the courts as such" *Coe v. Armour Fertilizer Works*, supra.

The present case

For this important federal question of Constitutional due process and equal protection for matters of deprivation, the 'reasonable belief' hearing provided by the decision we appeal is a partial adjudication which fails to fulfill the basic requisites of the hearing the Constitution guarantees, according to the decisions of the United States Supreme Court. The Constitution guarantees a hearing on the merits of the seizure in a meaningful manner, on the necessity of the seizure, to prevent erroneous deprivation, and a hearing of all defenses, all in a hearing provided by the government.

A 'reasonable belief' hearing considers only the initial belief of the seizing officer without determining the actual merits of the seizure. A 'reasonable belief' hearing upholds a seizure merely if the seizing officer believed it was necessary, whether or not it actually was necessary. A 'reasonable belief' hearing upholds a seizure whether or not the seizing officer's belief was erroneous. A 'reasonable belief' hearing does not consider all defenses, such as the defenses that the seizure was without merit, was not necessary, or was erroneous.

The personal right to property is of fundamental significance, interdependent with the right to liberty, as discussed.

III. Issues of Significance

a. Pre Versus Post Seizure Hearing

Deprivations of property occur either with a preseizure or a postseizure hearing, depending upon how urgent the seizing officer believes the situation to be. In the present case, Petitioner's animals were seized and then a postseizure hearing was provided. The statute used, California Penal Code section 597.1, details how the seizing officer may provide either a preseizure or a postseizure hearing.

Adjudicating whether someone's animals should be seized or should have been seized, must, regardless of the future or the past tense, be based upon the same reasons, whether the seizure is proposed or the seizure is already concluded. Adjudicating whether someone's animals should be seized or should have been seized should not be prejudiced by whether or not the seizure has already occurred.

Thus, what is to be decided at a preseizure hearing or a postseizure hearing must be the same – the justification for the seizure, or the lack thereof.

Our arguments to the Courts below and in this petition are that the a seizure is justified only if it is necessary, in light of all the evidence, not merely if the seizing officer himself believed that it was necessary. The hearing officer reasoned that he need only adjudicate whether or not the officer had a reasonable belief in his own mind when he decided to seize. Of course, this means that if the officer was

mistaken, in light of all the evidence, there is no relief for Petitioner.

But let us consider what would have happened in a preseizure hearing under the same statute.

Consider if the officer proposing seizure testified to a hearing officer at a preseizure hearing that he believed that Petitioner's animals should be seized, because a couple of them looked sick to him. Petitioner would then have had the opportunity to present the hearing officer with veterinary records, showing that the animals in question had just been seen by her veterinarian, so they were already under proper veterinary care, and had simply been sent home to convalesce.

As we have stated, such veterinary records are exactly what Petitioner provided to the hearing officer at the actual postseizure hearing, and no veterinary testimony contradicted the veterinary testimony supporting Petitioner.

At such a preseizure hearing which we consider for the sake of argument, the hearing officer would then naturally have to weigh the belief of the officer proposing seizure, a layman who looked at animals and thought they looked sick, against the veterinary records showing that the dogs had just been seen by the veterinarian.

Naturally, any hearing officer would consider the veterinary evidence. The hearing officer might weigh its apparent credibility. But, the hearing officer would not be doing his job if he were to simply ignore the existence of such evidence. Why would a

hearing officer permit seizure of animals on an allegation of failure to care if the animals were already under proper treatment?

And so, why would the elements of adjudication be any different for a postseizure hearing? If Petitioner could show that the animals were already under proper treatment and the seizure was unnecessary, then why should Petitioner be held liable to pay the costs of seizure?

The hearing officer had authority to weigh the credibility of the evidence Petitioner provided. But, what the hearing officer did was to explicitly decide the issue simply on the belief of the officer, which ignores any consideration of any evidence Petitioner provided, since none of that evidence was in the mind of the seizing officer when he formed his belief.

In deciding the issue without consideration of any evidence which was submitted after the seizing officer formed his belief, the hearing officer considered the matter in a way which is materially different than what would naturally be considered at a preseizure hearing. This presents a bias in favor of the seizing agency if they have already gone ahead and seized.

And, as discussed, this provides only an adjudication of probable cause, considers only the appearance of wrongdoing, and omits any adjudication of the actual merits of the seizure, all condoned by the State Court in the decision we appeal.

b. Probable Cause Versus Merits

The hearing officer stated that he was presiding over a 'reasonable belief" hearing, and stated that any other issues could be decided at some "later hearing" (Record of the Case: Transcript of Proceedings, Vol II, page 611 and Vol. I, pages 22-23)

There is no later hearing.

The decision we appeal allowed the seizing agency to provide that one hearing at which it need only provide a hearing as to the reasonable belief of the seizing officer.

The State, at the one and only hearing in the case, held Petitioner liable for the costs of seizure, $28,344.84, due to only the 'reasonable belief' of the seizing officer.

Aside from filing this petition, Petitioner could try to sue for the money in civil Court. However, with the liability adjudicated, the city which seized the animals need only claim res judicata and collateral estoppel.

That traps Petitioner from ever receiving a hearing on the merits.

Thus, if the government does not itself provide the full adjudicative hearing process, the individual may ultimately never receive any full adjudicative hearing, and reasonable belief, or probable cause, becomes the operative question, cancelling out any adjudication as to actual wrongdoing.

Under this trap, by the time the individual gets to civil Court, the liability has already been adjudicated and there is nothing left to fight over.

The hearing officer apparently operated on the analogy in his own mind that a reasonable belief or probable cause hearing is necessarily followed by a full hearing, as in a felony case.

But the analogy falls in reality, because there is no later hearing.

And, the idea that the individual can just sue later falls into that trap, along with justice.

The decision we appeal provides no meaningful post deprivation remedy.

c. Apparent Versus Actual Wrongdoing

The statute used in the present case, California Penal Code Section 597.1, requires the allegation of a criminal act committed by the owner or keeper of an animal in order to invoke its seizure provisions. The statute defines a crime and it also provides the procedure for the seizure of animals upon an allegation of that crime.

The owner or keeper must be alleged by the seizing officer to have violated the law, leaving an animal in need of seizure. This is distinct from an animal being seized from the path of a wildfire, or from a flood, for which California would have to use a different statutory process.

It is distinct, as discussed, from an animal being seized if alleged to be dangerous or vicious, in

which case the owner or keeper would be provided under the law a hearing to determine if the animal in fact poses a threat, beyond a hearing of mere probable cause.

Under the statute in the present case, in addition to the preseizure or postseizure hearing, some people will face criminal charges, and others will not, at the discretion of the prosecutor.

Those who receive a trial and are found guilty will be liable for the costs of seizure and may lose their animals, even if the hearing officer did not so determine. This gives the seizing agency two opportunities to be reimbursed and to deprive someone of one's animals.

Those who receive a trial and are found not guilty of the crime, but who had been found liable by the hearing officer upon a showing of probable cause for that same alleged crime, have no recourse under the statute for reclaiming their assets or animals. Here, probable cause wins over full adjudication.

For these people, they might prevail with some type of motion to a Court, that if they are not guilty they must not be held liable and lose their assets or animals, even if the statute does not provide such recourse. But for those who are never charged and never receive a trial, they cannot, of course, demand a trial, and there is no accommodation for them to prove that they are not guilty, so they cannot pursue any such motion.

In any case, a finding by the hearing officer that someone is liable for the costs of seizure is the

practical equivalent of a sentence to pay restitution. Under the statute, a crime must be alleged, and some form of hearing is held pursuant to that allegation.

In real situations across our nation, the States are depriving people of their most cherished assets, their beloved animals, and depriving people of their hard-earned money, and are never providing any hearing as to whether the seizure was actually necessary or whether there was any actual wrongdoing.

In real situations across our nation, animals are dying because their owners cannot afford to pay the liens placed upon them, with no hearing ever provided as to whether the seizure was actually necessary or whether there was any actual wrongdoing.

Due process is not satisfied by a hearing of whether the officer believed that he should seize. Due process is only satisfied by a hearing of whether the officer's belief was right or wrong, correct or incorrect, in light of all the evidence and all defenses presented at the hearing.

A person should not be held liable for costs of restitution for the mere appearance of wrongdoing to the seizing officer. A person should only be held liable if found to have actually committed an actual wrongdoing.

Our citizens who are brought to trial but who are not convicted are not held to pay for the costs of their arrests. Accordingly, our citizens who have had their assets seized, but who have not been found to

have actually committed an actual wrongdoing, and where the seizure has not been found to have been actually necessary, must not be held to pay for the costs of these seizures.

The presumption of innocence means that the State absorbs the cost of arrest if the case cannot be proven. Society accepts this as the cost of doing business so that we may have our system of justice. It does not necessarily mean that the State was wrong to arrest. An overabundance of caution is not necessarily wrong. A failure to provide due process is wrong.

When people are held liable for costs of restitution for the mere appearance of wrongdoing, with no adjudication of any actual wrongdoing, our most fundamental and sacred concepts of fairness and due process are indeed endangered.

We do not punish people because they look guilty. We only punish people upon a finding of actual guilt, upon a hearing of all the evidence presented.

To hold people liable for costs of restitution is the practical equivalent of imposing punishment. There is no practical difference between holding someone liable for costs of restitution and the assessment of a fine as someone's sentence after a conviction.

We appeal a decision that allows the State to use a civil backdoor to essentially allege a criminal act and punish the accused by finding the accused liable for restitution for the alleged criminal act,

without having to follow the basic principles of fairness and due process that prevail when a State must determine if someone is actually guilty of, and therefore liable for, a criminal act.

We appeal a decision that allows the State to hold someone liable for the costs of seizure every time a seizing officer shows up and sees a convalescing animal, regardless of whether that animal just came home from the veterinarian and is already under proper treatment. Under the decision we appeal, that seizing officer may come back as often as he likes, and each time he sees an animal that looks sick to him, he may seize that animal, no matter that the owner of that animal is doing everything right, short of hanging the animal's veterinary records from its collar.

A 'reasonable belief' hearing may always uphold the actions of a seizing officer upon seeing an animal with any visible symptoms of illness, because anytime one sees an animal with any visible symptoms of illness, one may reasonably believe that the animal is in need of immediate veterinary attention, that there may not be enough time to go looking for the owner to ask about the veterinary records.

Some of these seizures may be reasonable under the Fourth Amendment, but a hearing process which holds the owner liable for costs of seizure, essentially costs of restitution, when the owner did everything right, is not reasonable under due process under the Fourteenth Amendment.

We appeal a decision that, for all practical purposes, makes it a crime to house a convalescing animal.

We appeal a decision that provides those seizing officers who may be mistaken or overzealous, or whose intent may be somewhat less than completely sincere, the unfettered opportunity to indulge themselves, without any meaningful judicial oversight or postdeprivation remedy.

Under the decision we appeal, nothing serves to deter any seizing agency from coming back and doing this all over again to Petitioner or to anyone else, as often as they might care to do, charging $28,344.84 per visit.

d. Presumption of Innocence

When the State deprives someone of property, it is equivalent to depriving someone of liberty.

"In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other." *Lynch v. Household Finance*, supra.

The Fourteenth Amendment bars deprivation of life, liberty, or property without due process. The process due for the deprivation of property should be the same as the process due for deprivation of liberty.

A person is innocent until proven guilty. Thus, people are not deprived of their liberty until proven guilty. See *Coffin v. United States* 156 US 432

(1895). Those who have been jailed upon probable cause are entitled to be released if they are not proven guilty. They do not pay for the costs of their arrest. Those who have posted bond do not lose the costs of the bond they have paid the Court.

A person accused of having failed to care for an animal should have to be proven actually responsible for having failed to care for an animal before the person loses the animal to the government or loses the costs of seizure as restitution to the government.

To allow otherwise does nothing less than throw out the presumption of innocence.

Probable cause is not enough. It is not enough to deprive a citizen of either liberty or property.

e. Fourth Versus Fourteenth Amendment

We submit that there may be some confusion, in legislatures and Courts in places like California and Delaware, between the application of the Fourth and the Fourteenth Amendments to the United States Constitution.

Under the Fourth Amendment, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but for probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Under the Fourteenth Amendment, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fourth Amendment concerns seizure, which like search, is performed pending something yet to come, like a trial.

The Fourteenth Amendment concerns deprivation, which involves intended permanence.

(At least permanence is intended, even though one may refer to "temporary, nonfinal deprivation", as in *Fuentes v. Shevin*, supra, or one may refer to a "post-deprivation remedy", as in *Hudson v. Palmer*, supra, if the deprivation, albeit with intended permanence, may still be corrected)

The difference between seizure and deprivation is the difference between taking and keeping.

In the present case, we are discussing a seizure which ultimately resulted in a deprivation. The same is true for the different State cases sampled.

The seizure occurred by the seizing officer in the field, when he seized the animals.

The deprivation occurred by the hearing officer in his chambers, when he rendered his decision.

The hearing officer was responsible for deciding two issues under the statute: whether or not to return the animals, dependent upon Petitioner's ability to care for them, and whether the seizing agency or Petitioner would be responsible for the costs of seizure. The hearing officer functioned in an administrative law capacity, hired by the seizing agency.

The hearing officer returned all of Petitioner's animals, but deprived Petitioner of her money.

When the subject of animal seizure is up for legislation or adjudication, people, in thinking about seizure, may think about the Fourth Amendment, which covers seizure. They then think about probable cause and reasonable belief as sufficient to satisfy the provisions of the Fourth Amendment. They may not take it to the next step and think about deprivation, which is covered by the Fourteenth Amendment.

The due process clause of the Fourteenth Amendment originated, of course, in the Fifth Amendment. The authors of the Constitution would have had no good reason to repeat the Fourth Amendment in the Fifth Amendment.

Probable cause and reasonable belief may be fine for seizure pending a trial, but only due process is sufficient for deprivation with intended permanence, and the authors of the Constitution did not mean for probable cause (upon reasonable belief) and due process to be redundant concepts.

It would not make sense for them to be redundant concepts, for it is naturally unfair to deprive someone permanently upon the seizing officer's belief or suspicion alone without any adjudication to determine, in light of all the evidence and defenses presented, what actually happened.

Yet, in the decision we appeal, the California Court found that a hearing of the officer's reasonable belief was enough to satisfy procedural due process, confusing elements of the Fourth and the Fourteenth Amendments, and wrongly interpreting the Constitution of the United States.

And, the Court in Delaware, as we cited, found that probable cause is sufficient to deprive someone of their property, just as in the California decision we appeal.

Whether or not the seizure itself may have been reasonable is not the issue at this point. It may sometimes be reasonable for a seizing officer to act in an abundance of caution and to rely on his own belief, whether or not his belief may be mistaken.

But, the process afforded Petitioner was not the process due. Petitioner must not be held liable for the seizing officer's reasonable abundance of caution,

nor for his reasonable mistake. Petitioner should only be held liable for what Petitioner is responsible for, Petitioner's own action or inaction.

This confusion between the Fourth and the Fourteenth Amendments is having tragic consequences from coast to coast, depriving people of their animals, their money, and their Constitutional protections.

The present case and the laws and cases sampled show the dire and urgent need this nation is in for a decision to clarify what minimum process is due all.

CONCLUSION

We submit that this petition for writ of certiorari should be granted.

The present case presents an opportunity for this Court to define Constitutional due process minimums, with equal protection, for all citizens everywhere in the United States. Those in California and Delaware deserve the same federal protections from deprivation as those in Florida and Texas and New York.

Any encroachment upon fairness and due process in our nation serves to diminish our democracy, and any encroachment upon fairness and due process must be met with prompt resistance, before it spreads, for the stripping of liberties from

the accused among us is merely the first step in the stripping of liberties from all of us.

All hearings on deprivation are hearings of a federal nature and, under the federal Constitution, should provide an adjudication of whether or not the deprivation was actually necessary in light of all the evidence and all the defenses presented, not simply an adjudication of probable cause or whether or not the seizing officer reasonably believed the deprivation to be necessary. All such hearings should provide full due process, with equal protection for all, as required by the federal Constitution, and should be subject to federal Court review. All hearings on deprivation are hearings of a federal nature and, under the federal Constitution, should be subject to a national standard of justice.

All citizens of our nation should be guaranteed the full protection of our federal Constitution no matter where in our nation they may be.

Respectfully submitted,

Charlotte Spadaro, Attorney at Law
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Court of Appeal, Fourth Appellate District, Div. 2 -
No. E040748
S154863

IN THE SUPREME COURT OF CALIFORNIA

En Banc

CHARLOTTE SPADARO, Plaintiff and Appellant,

v.

CITY OF RIALTO, Defendant and Respondent.

The petition for review is denied.

[	SUPREME COURT	]
[	FILED	]
[		]
[	AUG 29 2007	]
[	Frederick K. Ohlrich Clerk	]
[	_____	]
[	Deputy	]

GEORGE

_____

Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION TWO

No. E040748

June 18, 2007

CHARLOTTE SPADARO, PLAINTIFF AND APPELLANT,
v.
CITY OF RIALTO, DEFENDANT AND RESPONDENT.

APPEAL from the Superior Court of San Bernardino County. Bob N. Krug, Judge. (Retired judge of the San Bernardino Super. Ct., sitting under assignment by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed. (Super. Ct. No. SCVSS129733).

Charlotte Spadaro, in pro. per., for Plaintiff and Appellant.

Law Offices of Robert A. Owen and Kathy M. Gandara for Defendant and Respondent.

The opinion of the court was delivered by: McKinster Acting P.J.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

OPINION

Charlotte Spadaro appeals the denial of a petition for writ of mandate. The trial court affirmed an administrative decision upholding the City of Rialto's (the city) seizure of approximately 180 dogs and cats from Spadaro's kennel pursuant to Penal Code section 597.1*fn1 without affording her a pre-seizure hearing, and its imposition of approximately $28,000 in costs of impoundment and care as a condition of returning the animals to Spadaro. Spadaro contends that Penal Code section 597.1 applies only to abandoned animals and that in any event, the conditions at the kennel did not warrant seizure without a prior hearing.

We will affirm the order.

BACKGROUND

Spadaro operated an animal shelter out of a house in Rialto. (The operation is referred to as a kennel, but there is no evidence that it was a commercial venture. We infer that it was an animal rescue operation.) A complaint by neighbors concerning a strong odor and blood running down the driveway prompted an inspection. It was discovered that Spadaro had placed the remains of three dogs, including a Great Dane, in a freezer which had ceased to function. Inspection of the property revealed numerous violations of city ordinances and the presence of a large number of dogs and cats in unsanitary conditions. Spadaro and the city reached an agreement for abatement of the violations. In February 2005, animal control officers began visiting the premises weekly to inspect the condition of the premises and the animals. At one point, Spadaro was ordered to remove a large quantity of animal remains from the premises. Before the next inspection, she rented a truck, placed approximately 2,000 pounds of animal carcasses in it, and abandoned the truck in Riverside County.

Spadaro made some improvements in the conditions at the kennel but did not bring the property into compliance. Rialto Police Sergeant Crispin determined that an unannounced inspection should be made and obtained a search warrant. The search warrant was executed on May 12, 2005. Spadaro was not present.

Crispin and other animal control officers observed that the house was filthy with animal feces, diarrhea and vomit, as well as rodent droppings. There were two dogs in the kitchen area, both of which were very thin. One had a large "hot spot," or skin lesion, on its flank, and the other had an infected leg and had difficulty walking. There were about 45 adult cats and kittens in one bedroom of the house. The room was filthy, and several of the adult cats and all of the kittens appeared ill, with watery eyes, sneezing and conjunctivitis. The kittens were thin and appeared dehydrated. One kitten was dead. There were several dogs in another room, including several puppies. One of the puppies appeared to be dying. Officers found approximately 14 cats in the garage, several of whom also appeared ill.

Outside, the kennel area was also filthy. One dog, which had an open sore, was in contact with other dogs and was lying in feces. A number of the dogs had skin lesions and many had "fly strikes," or open sores caused by biting flies.

The officers seized 184 dogs and cats. Those needing immediate care were taken directly to veterinarians; the others were taken to the county animal shelter, where they were examined by a veterinarian and treated as necessary. Spadaro was given notice of her right to an administrative hearing pursuant to Penal Code section 597.1.

At the conclusion of the first day of the hearing, the

hearing officer determined that the animals, except for a few which were still seriously ill, could be released to Spadaro, on the condition that she place them at specified boarding facilities. After a two-day evidentiary hearing, the hearing officer determined that the animal control officers reasonably believed that it was necessary to seize the animals without a prior hearing in order to protect the health or safety of the animals. He ordered Spadaro to pay all costs incurred in the seizure and impoundment of the animals. Those costs apparently amounted to over $28,000.

Spadaro filed a petition for writ of mandate in the superior court. The petition is not included in the appellate record. After briefing and argument, the court affirmed the hearing officer's order. Spadaro filed a timely notice of appeal.

LEGAL ANALYSIS

STANDARD AND SCOPE OF REVIEW

We must first determine the applicable standard of review. Spadaro does not address this fundamental question. However, her arguments focus primarily on the superior court's review of the administrative proceeding rather than on the administrative proceeding itself.*fn2 She argues, among other things, that the superior court failed to discharge its duty because it failed to consider evidence she sought to present, which she claims the city concealed from

the administrative hearing officer. Implicitly, then, she appears to contend that the superior court's function was to examine the evidence independently, including new evidence she sought to bring to the court's attention, and that we are to review the superior court's findings and procedures.

The standard of review in administrative mandate proceedings depends upon the nature of the right affected by the administrative proceeding. If the decision of the administrative agency will substantially affect a "fundamental vested right," then the trial court must not only examine the record of the administrative proceeding for errors of law, but must also exercise its independent judgment on the evidence. However, when the administrative proceeding neither involves nor substantially affects such a right, the trial court's duty is merely to examine the entire record of the administrative proceeding to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law. (MHC Operating Limited Partnership v. City of San Jose (2003) 106 Cal.App.4th 204, 217.) It need not look beyond the record of the administrative proceeding. (Bixby v. Pierno (1971) 4 Cal.3d 130, 144.)

For administrative review purposes, a right is fundamental "if it is important enough `to individuals in their life situations' to require an independent judicial review of the evidence." (Berlinghieri v. Department of Motor Vehicles (1983) 33 Cal.3d 392, 397.) Spadaro has provided no

argument or authority which would support the conclusion that possession of animals in her capacity as the operator of what is apparently a nonprofit animal rescue operation is a fundamental right, and we are not aware of any such authority.*fn3 Accordingly, the trial court was not required to conduct an independent review of the evidence. (MHC Operating Limited Partnership v. City of San Jose, supra, 106 Cal.App.4th at p. 217.)

If the trial court was not required to conduct an independent review of the evidence, then on appeal, the appellate court also conducts only a review of the administrative record to determine whether the agency's findings are supported by substantial evidence and whether the agency committed errors of law. The appellate court does not review the findings of the superior court. (MHC Operating Limited Partnership v. City of San Jose, supra, 106 Cal.App.4th at pp. 218-219.) We therefore review the administrative record and the factual findings of the administrative hearing officer under the deferential substantial evidence standard. (Ibid.) We review Spadaro's contentions concerning the applicability of statutes, including Penal Code section 597.1, independently. (MHC Operating Limited Partnership v. City of San Jose, supra, at p. 219.)

Because we have determined that our function is to review the conduct of the administrative hearing under the standards described above, we need not address Spadaro's various contentions pertaining to the superior court's alleged failure to apply a correct

standard of review, its alleged failure to consider her arguments, or its refusal to examine evidence Spadaro claims the city concealed from the administrative hearing officer. Because the tone and substance of these arguments infects much of her briefing, however, we feel that it is worth noting that Spadaro's arguments concerning the trial court's review are replete with unsupported and spurious assertions. For example, she repeatedly asserts that the administrative hearing was criminal in nature, "a statutorily provided hearing process of the penal code, for the purpose of determination of criminal liability." This is incorrect. The sole subjects of the administrative hearing were whether the seizure of the animals was justified and whether they could be returned to Spadaro. (Pen. Code, § 597.1, subds. (f) & (h).)*fn4 Misdemeanor proceedings under Penal Code section 597.1 were separately pending in the criminal courts.

In a similar vein, Spadaro contends that the city improperly relied on hearsay evidence in support of its assertion that Spadaro had concealed approximately 2000 pounds of animal remains, but wrongfully failed to produce the police report on which the testimony was based. She asserts that if the city had produced the report, she would have been able to demonstrate that the report was grossly exaggerated. She provides no authority for the assertion that the city was required to produce the report rather than rely on the witness's testimony concerning the contents of the report, and she does not explain why she could not have obtained and produced a copy of the report to refute the witness's

testimony, if in fact the report does refute it.

Spadaro also claims that the trial court improperly refused to consider a videotape which, she contends, showed that the animal control officers had already decided, before they went to her kennel, that they were going to seize her animals. She contended in the superior court and contends on appeal that the videotape was exculpatory and that the city wrongfully failed to produce it during discovery. However, the superior court did view the videotape and determined that it was not exculpatory. Spadaro does not challenge that finding.

Much of the rest of Spadaro's contentions concerning the administrative hearing and the superior court's review are nothing more than an attempt to reargue the evidence and to argue that the hearing officer and the court should have reached different conclusions. As we have stated above and will discuss further below, we cannot reweigh the evidence but must review the record only to determine whether it contains substantial evidence which supports the hearing officer's conclusions.

PENAL CODE SECTION 597.1 APPLIES*fn5

Spadaro contends that section 597.1 applies only to stray or abandoned animals, while section 597f applies to abused or neglected animals generally. She argues that because the city and the hearing officer applied section 597.1, rather than section 597f, the

hearing officer lacked jurisdiction.

Spadaro bases her argument primarily on the following language of section 597.1:

"Every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner." (§ 597.1, subd. (a), italics added.)

In construing a statute, our primary task is to determine the intent of the Legislature so as to effectuate the purpose of the law. (Dyna-Med, Inc. v. Fair Employment and Housing Com. (1987) 43 Cal.3d 1379, 1386.) To determine legislative intent, we look first to the statutory language. (Ibid.) Even a cursory glance at the language employed in sections 597f and 597.1 demonstrates that in enacting those statutes, the Legislature did not intend to provide only for abandoned animals in one statute and for neglected animals generally in the other. Rather, both statutes are entitled "failure to care for animals," and both contain language which applies to stray or abandoned animals and language which applies more broadly to abused or neglected animals

generally.

In pertinent part, section 597f provides as follows:

"(a) Every owner, driver, or possessor of any animal, who permits the animal to be in any building, enclosure, lane, street, square, or lot, of any city, city and county, or judicial district, without proper care and attention, shall, on conviction, be deemed guilty of a misdemeanor. And it shall be the duty of any peace officer, officer of the humane society, or officer of a pound or animal regulation department of a public agency, to take possession of the animal so abandoned or neglected and care for the animal until it is redeemed by the owner or claimant, and the cost of caring for the animal shall be a lien on the animal until the charges are paid. Every sick, disabled, infirm, or crippled animal, except a dog or cat, which shall be abandoned in any city, city and county, or judicial district, may, if after due search no owner can be found therefor, be killed by the officer; and it shall be the duty of all peace officers, an officer of such society, or officer of a pound or animal regulation department of a public agency to cause the animal to be killed on information of such abandonment. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and, if the animal is not then in the custody of its owner, the officer shall give notice thereof to the owner, if known, and may provide suitable care for the animal until it is

deemed to be in a suitable condition to be delivered to the owner, and any necessary expenses which may be incurred for taking care of and keeping the animal shall be a lien thereon, to be paid before the animal can be lawfully recovered.

"(b) It shall be the duty of all officers of pounds or humane societies, and animal regulation departments of public agencies to convey, and for police and sheriff departments, to cause to be conveyed all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer or agency to be a veterinarian that ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment. [¶] . . . [¶]

"(d) Notwithstanding any other provisions of this section, any officer of a pound or animal regulation department or humane society, or any officer of a police or sheriff's department may, with the approval of his or her immediate superior, humanely destroy any abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal." (§ 597f, subds. (a), (b) & (d).)

Similarly, section 597.1 provides, in pertinent part, as follows:

"(a) Every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. . . .

"(b) Every sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane society officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. . . ." (§ 597.1, subds. (a) & (b), italics added.) Thus, both statutes provide both for the care of abandoned animals and for the seizure of and care for "any" animal which is neglected or cruelly treated.

It is not readily apparent why the Penal Code contains two such overlapping provisions. However, where two statutes overlap in their treatment of a subject, they should be construed together and reconciled to the extent possible. If it is reasonable to do so, effect should be given to both. (Tripp v. Swoap (1976) 17 Cal.3d 671, 679.) Here, the two statutes are so similar in their substance and overlap to such an extent that we cannot say that one is a general statute while the other is a special statute, as Spadaro seems to imply.*fn6 The statutes do not conflict, and the differences between them are slight. Both statutes penalize failure to provide proper care and attention to an animal as a misdemeanor. (§ 597f, subd. (a); § 597.1, subd. (a).) Section 597.1 provides for hearings prior to seizure in some instances and after seizure in other instances. Section 597f does not, and to that extent has been found unconstitutional. (Carrera v. Bertaini (1976) 63 Cal.App.3d 721, 726-730.) Apart from the pre- or post-seizure hearing provisions, or lack thereof, the sole significant difference between the two statutes which we can discern is that whereas section 597f requires the owner to reimburse the agency only for the cost of caring for the animal during the impoundment as a condition of the return of the animal, section 597.1 requires the owner to reimburse the agency for the cost of seizing the animal, as well as for the cost of caring for it, either as a condition of returning the animal if the seizure is found to have been proper (§ 597.1, subd. (h)) or as a penalty if the owner is convicted criminally of violating section 597.1 or other specified statutes. (§ 597.1, subd. (k).) Even if section 597.1 were a special statute with respect to section 597f, as Spadaro

appears to contend, however, it clearly applies to her situation: "Every owner . . . of any animal who permits the animal to be in any . . . lot of any city . . . without proper care and attention" is guilty of a misdemeanor (§ 597.1, subd. (a)), and an animal control officer may take charge of any animal which is being cruelly treated (§ 597.1, subd. (b)). Subjecting animals to filthy conditions such as those alleged here, in which serious infections and illnesses can breed, is cruel treatment. Thus, neither the city nor the hearing officer erred in applying the statute to Spadaro.*fn7

Spadaro also contends that the legislative history of a 1998 amendment to section 597.1 supports her contention that the statute applies only to stray or abandoned animals. The amendment Spadaro refers to is part of a bill entitled "Stray animals: duties of pounds and shelters." (Sen. Bill No. 1785 (1997-1998 Reg. Sess.).) However, although Senate Bill No. 1785 enacted a substantial amount of legislation pertaining to the treatment of stray and abandoned animals, it made only minor changes to section 597.1 and did not affect its substance. (Stats. 1998, ch. 752; see Historical and Statutory Notes, 49 West's Ann. Pen. Code (1999 ed.) foll. § 597.1, pp. 57-58.) Thus, the fact that section 597.1 was amended along with the enactment or amendment of other statutes involving stray animals does not establish that section 597.1 applies only to stray or abandoned animals.

THE ADMINISTRATIVE HEARING WAS

CONDUCTED PROPERLY

Spadaro contends that, even assuming section 597.1 was the correct statute, the administrative hearing was invalid because it did not comply with provisions of the Government Code pertaining to administrative proceedings. Specifically, she contends that the city was not permitted to conduct an informal hearing or rely on hearsay evidence because the proceeding involved disputed issues of material fact.

Spadaro relies on Government Code sections 11415.10 and 11425.10. Both are part of the Administrative Procedure Act. (Gov. Code, § 11400.) That act applies to the conduct of adjudicative proceedings by state departments and agencies. (Gov. Code, §§ 11405.20, 11405.30, 11410.10, 11410.20.) It does not apply to local agencies, such as cities, unless the provisions of the act are made applicable by statutes to proceedings of the local agency. (Gov. Code, § 11410.30.) Spadaro has not cited any statute which makes these procedures applicable to an administrative hearing conducted pursuant to Penal Code section 597.1 by a city or other local agency. We are not aware of any such provision, and we therefore conclude that the Administrative Procedure Act does not apply to the proceeding conducted in this case.

Spadaro also contends that the hearing was not properly conducted because the hearing officer failed to determine whether the seizure of the animals was

actually justified by the condition of the animals, as opposed to determining whether the officers had "reasonable grounds to believe that very prompt action is required to protect the health or safety" of an animal or of others. (§ 597.1, subd. (b).) She relies on an unpublished case, Spencer v. Placer County Animal Control (Mar. 27, 2003, C039081 [nonpub. opn.]), and asks that we take judicial notice of that case. We are, of course, precluded by the rules of court from considering an unpublished case except under circumstances not applicable here. (Cal. Rules of Court, rule 8.1115.) We cannot circumvent this rule by taking judicial notice of the content of the unpublished opinion; we can take judicial notice only of the existence of the opinion as a record of a court of this state. (Evid. Code, § 452, subd. (d).) We have previously denied Spadaro's request for judicial notice.

In any event, her argument is without merit. Subdivision (f) of section 597.1 provides for a post-seizure hearing to determine "the validity of the seizure or impoundment, or both." The seizure is valid, as discussed above, if the officer has a reasonable belief that prompt action, i.e., impoundment, is required to protect the health or safety of the animal or of others. (§ 597.1, subd. (b).) If the seizure is justified under that standard, the impoundment is necessarily justified as well, as is the imposition on the owner of the cost of the seizure and impoundment. (See § 597.1, subd. (h).) If the owner demonstrates at the post-seizure hearing that she can adequately care for the animal, then the animal will be returned, subject to payment of the

cost of seizure and impoundment. (§ 597.1, subds. (b), (f).) If the hearing officer determines that the animal was not properly seized, then the animal must be returned without requiring the owner to pay the costs of seizure and impoundment. (§ 597.1, subd. (b).)

Spadaro contends that this interpretation of the statute does not comport with the intent of the Legislature, but she does not cite any evidence which establishes that the Legislature did not so intend. In interpreting a statute, we look first to the statutory language. If it is clear and unambiguous, we look no further; rather, we assume that the Legislature's intent is reflected in the words it chose in enacting the statute. (Hunt v. Superior Court (1999) 21 Cal.4th 984, 1000.) Here, the language is unambiguous and clearly reflects an intention to permit seizure and impoundment of an animal if the officer reasonably believes that the action is necessary to protect the animal, followed by a hearing to determine the validity of that belief.

Spadaro also contends that section 597.1 fails to afford constitutionally adequate due process unless it provides for a hearing in which it is determined whether the animal's actual condition justified seizure and impoundment, as opposed to reasonableness of the officer's belief that seizure was necessary to protect the animal's health or safety. We disagree. Procedural due process is satisfied by affording the owner or keeper of the animal notice and an opportunity to be heard on the validity of the

seizure of the animal, with provision for return of the animal if the seizure was not justified. (Carrera v. Bertaini, supra, 63 Cal.App.3d at p. 729, and cases cited therein.) Section 597.1 complies with those requirements. (§ 597.1, subds. (b), (f).)

SUBSTANTIAL EVIDENCE SUPPORTS THE HEARING OFFICER'S FINDINGS

As pertinent, section 597.1, subdivision (b) provides: "When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g)."

Section 597.1, subdivision (f) provides, in pertinent part:

"Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a post-seizure hearing to determine the validity of the seizure or impoundment, or both."*fn8 As we have discussed above, the validity of the seizure and the

impoundment depends upon whether the officer had a reasonable belief that seizure of Spadaro's animals was necessary to protect the health or safety of the animals. We therefore review the record of the administrative hearing to determine whether substantial evidence supports the hearing officer's finding that Officer Crispin had such a reasonable belief. (MHC Operating Limited Partnership v. City of San Jose, supra, 106 Cal.App.4th at pp. 218-219.)

In determining whether substantial evidence exists, we view all factual matters in the light most favorable to the prevailing party, resolving all conflicts and indulging all reasonable inferences from the evidence to support the judgment. (Bickel v. City of Piedmont (1997) 16 Cal.4th 1040, 1053.) We do not reweigh the evidence. We uphold the judgment if it is supported by substantial evidence, even if substantial evidence to the contrary also exists, and the trier of fact might have reached a different result if it had believed other evidence. (Howard v. Owens Corning (1999) 72 Cal.App.4th 621, 631.) "Substantial evidence" is not, however, synonymous with "any" evidence. (Roddenberry v. Roddenberry (1996) 44 Cal.App.4th 634, 651.) To be substantial, evidence must be reasonable in nature, credible and of solid value. (DiMartino v. City of Orinda (2000) 80 Cal.App.4th 329, 336.)

Here, the officers testified that the house, the garage and the outside kennel areas were filthy, with urine, feces, diarrhea and vomit "everywhere." There were large numbers of rodents in the house and yard, as

well as rodent droppings and cockroaches. One dog inside the house had a "huge" heat rash on its flank. Another had an injured leg and was very thin.

There were about 30 adult cats and 12 to 15 kittens in one room. Several of the cats and all of the kittens showed signs of upper respiratory infection. The kittens were thin and dehydrated as well. One kitten was dead. The room the female cats and the kittens were in was hot and stuffy and smelled foul. The litter boxes were full of feces and there was diarrhea on the floor. Approximately 14 male cats were confined in the garage. Many of them showed signs of upper respiratory infection as well. Officer Bluff-Hopp testified that the cats were in the worst condition she had seen among Spadaro's cats during her visits to the kennel. She believed that some of cats might die if they weren't removed.

Elsewhere in the house, in a room with "a lot" of animal diarrhea and vomit, there was a female dog with a number of puppies. One of the puppies appeared to be dying.

Outside, in the dog kennels, there was urine and feces everywhere - "You couldn't step and not step in something." One dog with open sores was in contact with other dogs and was lying in feces. Many of the dogs had fly strikes, which are skin lesions caused by biting flies. Others had hot spots or lesions which appeared to be mange.

The officers' concerns for the health and safety of the animals were substantiated by the testimony of Dr. Odani, the veterinarian who examined the animals after they were seized. Dr. Odani testified that both fly strikes and hot spots can become infected or infested with maggots. She testified that a high "bacterial load" in the environment would place the animals with skin lesions at heightened risk of infection. It can be inferred from the testimony that there were feces, diarrhea, vomit and urine "everywhere" that the bacterial load was indeed very high. Dr. Odani testified that upper respiratory infections are contagious among cats and that the infected cats should have been isolated from the healthy cats while they were being treated. She stated that cats which are in contact with a sick animal need to be watched closely and perhaps put on prophylactic medication. By "watched," she meant that someone needed to spend a significant amount of time with the animals, not just spend a few minutes with them twice a day while feeding them, because the symptoms might not be noticed in such a short time. She implied, at least, that upper respiratory infections can be fatal to cats. The cats were also severely infested with fleas and had been for some time - there were flea eggs "dropping off of them."

Taken all together, the evidence supports the conclusion that many of the animals were at risk of immediate harm if they were not removed, and that even those animals who were generally healthy were at risk from the filthy conditions. Therefore, the fact that many of the animals were in generally good

condition and were well fed does not mandate the conclusion that those animals should not have been seized, as Spadaro asserts. Rather, because the evidence, viewed in the light most favorable to the prevailing party, supports the conclusion that the officers reasonably believed that the animals' health and safety necessitated removing them from Spadaro's kennel, we must uphold the hearing officer's order. (Howard v. Owens Corning, supra, 72 Cal.App.4th at p. 631.)

DISPOSITION

The administrative order and the order denying Spadaro's petition for writ of mandate are affirmed. The parties are to bear their own costs on appeal.

We concur: Richli J., Miller J.

Opinion Footnotes

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*fn1 In pertinent part, Penal Code section 597.1 provides as follows:
"(b) Every sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be

killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane society officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid. [¶] . . . [¶]

"(f) Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a post-seizure hearing to determine the validity of the seizure or impoundment, or both. [¶] . . . [¶]

"(g) Where the need for immediate seizure is not present and prior to the commencement of any criminal proceedings authorized by this section, the agency shall provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a hearing prior to any seizure or impoundment of the animal. The owner shall produce the animal at the time of the hearing unless, prior to the hearing, the owner has made arrangements with the agency to view the animal upon request of the agency, or unless the owner can provide verification that the animal was humanely destroyed. Any person who willfully fails to produce the animal or provide the verification is guilty of an infraction, punishable by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000). [¶] . . . [¶]

"(h) If any animal is properly seized under this section, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal. Furthermore, if the charges for the seizure or impoundment and any other charges permitted under this section are not paid within 14 days of the seizure, or, if the owner, within 14 days of notice of availability of the animal to be returned, fails to pay charges permitted under this section and take possession of the animal, the animal shall be deemed to have been abandoned and may be disposed of by the impounding officer. [¶] . . . [¶]

"(k) Upon the conviction of a person charged with a violation of this section, or Section 597 or 597a, all animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for

proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the seized or impounded animals. Each person convicted in connection with a particular animal may be held jointly and severally liable for restitution for that particular animal. The payment shall be in addition to any other fine or sentence ordered by the court."

*fn2 Spadaro does address some of her arguments to the conduct of the administrative proceeding, arguing that the hearing officer improperly applied Penal Code section 597.1 and that he failed to comply with statutes governing the conduct of hearings before state administrative agencies. We address those arguments below.

*fn3 At oral argument, Spadaro informed us that two of the animals seized were her pets. She has not provided us with a citation to evidence in the record that any of the animals were her personal pets.

*fn4 As pertinent, subdivision (f) of section 597.1 provides:
"Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the

health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a post-seizure hearing to determine the validity of the seizure or impoundment, or both." (Italics added.)

*fn5 All further statutory references will be to the Penal Code unless otherwise indicated.

*fn6 "[W]hen the Legislature has enacted a specific statute addressing a specific matter, and has prescribed a sanction therefor, the People may not prosecute under a general statute that covers the same conduct, but which prescribes a more severe penalty, unless a legislative intent to permit such alternative prosecution clearly appears. [Citation.]" (Mitchell v. Superior Court (1989) 49 Cal.3d 1230, 1250, original italics.)

*fn7 The distinction, if any, in the application of sections 597f and 597.1 has not previously been addressed. We note, however, that section 597f was applied to cattle wandering "at large," i.e., stray animals, in Carrera v. Bertaini, supra, 63 Cal.App.3d at pages 724- 725, while section 597.1 was applied to neglected animals in a pet shop in Broden v. Marin Humane Society (1999) 70 Cal.App.4th 1212, 1216-1218. This is the converse of the application for which Spadaro argues, i.e., that section 597f applies

generally to neglected or abused animals, while section 597.1 applies specifically to abandoned animals.

*fn8 Section 597.1, subdivision (f) further sets forth the requirements and procedures for notice and for the conduct of the post- seizure hearing; subdivision (g) contains similar provisions for a pre- seizure hearing when the conditions do not warrant immediate seizure.

597.1 (a) Every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with the provisions of subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid, if the seizure is upheld pursuant to this section.

(b) Every sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane society officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for

the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid.

(c) Any peace officer, humane society officer, or animal control officer shall convey all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer to be a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

If the owner does not redeem the animal withn the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal. If the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

Whenever any animal is transferred to a veterinarian in a clinic, such as an emergency clinic that is not in continuous operation, the veterinarian

may, in turn, transfer the animal to an appropriate facility.

If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services that are provided pending the owner's inquiry to the responsible agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal was licensed or, if the animal is unlicensed, shall be paid by the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. The cost of caring for and treating any animal seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to the owner until the charges are paid. No veterinarian shall be criminally or civilly liable for any decision that he or she makes or for services that he or she provides pursuant to this subdivision.

(d) An animal control agency that takes possession of an animal pursuant to subdivision (c) shall keep records of the whereabouts of the animal from the time of possession to the end of the animal's impoundment, and those records shall be available for inspection by the public upon request for three years after the date the animal's impoundment ended.

(e) Notwithstanding any other provision of this section, any peace officer, humane society officer, or any animal control officer may, with the approval of his or her immediate superior, humanely destroy any stray or abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal.

(f) Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure hearing to determine the validity of the seizure or impoundment, or both.

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice of the seizure or impoundment, or both, to the owner or keeper within 48 hours, excluding weekends and holidays. The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal seized, including any identification upon the animal.

(C) The authority and purpose for the seizure, or impoundment, including the time, place, and circumstances under which the animal was seized.

(D) A statement that, in order to receive a postseizure hearing, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning an enclosed declaration of ownership or right to keep the animal to the agency providing the notice within 10 days, including weekends and holidays, of the date of the notice. The declaration may be returned by personal delivery or mail.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal and that the animal

shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in liability for this cost.

(2) The postseizure hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or of his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a postseizure hearing or right to challenge his or her liability for costs incurred.

(4) The agency, department, or society employing the person who directed the seizure shall be responsible for the costs incurred for caring and treating the animal, if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds to believe very prompt action, including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal, the charges for the seizure and care of the animal shall be a lien on the animal, and the animal shall not be returned to its owner until the charges are paid and the seizing agency or hearing officer has determined that the animal is physically fit or the owner demonstrates to

the seizing agency's or the hearing officer's satisfaction that the owner can and will provide the necessary care.

(g) Where the need for immediate seizure is not present and prior to the commencement of any criminal proceedings authorized by this section, the agency shall provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a hearing prior to any seizure or impoundment of the animal. The owner shall produce the animal at the time of the hearing unless, prior to the hearing, the owner has made arrangements with the agency to view the animal upon request of the agency, or unless the owner can provide verification that the animal was humanely destroyed. Any person who willfully fails to produce the animal or provide the verification is guilty of an infraction, punishable by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000).

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice stating the grounds for believing the animal should be seized under subdivision (a) or (b). The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal to be seized, including any identification upon the animal.

(C) The authority and purpose for the possible seizure or impoundment.

(D) A statement that, in order to receive a hearing prior to any seizure, the owner or person authorized to keep the animal, or his or her agent, shall request

the hearing by signing and returning the enclosed declaration of ownership or right to keep the animal to the officer providing the notice within two days, excluding weekends and holidays, of the date of the notice.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal, that any animal seized shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in a conclusive determination that the animal may properly be seized and that the owner shall be liable for the charges.

(2) The preseizure hearing shall be conducted within 48 hours, excluding weekends and holidays, after receipt of the request. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who requests the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper or his or her agent to request or to attend a scheduled hearing shall result in a forfeiture of any right to a preseizure hearing or right to challenge his or her liability for costs incurred pursuant to this section.

(4) The hearing officer after the hearing may affirm or deny the owner's or keeper's right to custody of the animal and, if reasonable grounds are established, may order the seizure or impoundment of the animal for care and treatment.

(5) If any animal is properly seized under this section, the owner is no longer entitled to possession

liable to the seizing agency for the cost of the seizure and care of the animal. Furthermore, if the charges for the seizure or impoundment and any other charges permitted under this section are not paid within 14 days of the seizure, or, if the owner, within 14 days of notice of availability of the animal to be returned, fails to pay charges permitted under this section and take possession of the animal, the animal shall be deemed to have been abandoned and may be disposed of by the impounding officer.

(j) If the animal requires veterinary care and the humane society or public agency is not assured, within 14 days of the seizure of the animal, that the owner will provide the necessary care, the animal shall not be returned to its owner and shall be deemed to have been abandoned and may be disposed of by the impounding officer. A veterinarian may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is mortally crippled. A veterinarian also may immediately humanely destroy an impounded animal afflicted with a serious contagious disease unless the owner is his or her agent immediately authorizes treatment of the animal by a veterinarian at the expense of the owner or agent.

(k) An animal properly seized under this section shall be returned to the owner only at the determination of the seizing agency or hearing officer, the animal is physically fit or the owner can demonstrate to the seizing agency's or hearing officer's satisfaction that the owner can and will provide the care.

(l) Upon the conviction of a person charged with a violation of this section or Section 597 or 597a, all

animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the seized or impounded animals. Each person convicted in connection with a particular animal may be held jointly and severally liable for restitution for that particular animal. The payment shall be in addition to any other fine or sentence ordered by the court.

The court may also order, as a condition of probation, that the convicted person be prohibited from owning, possessing, caring for, or having any contact with, animals of any kind and require the convicted person to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care or control of any animals. In the event of the acquittal or final discharge without conviction of the arrested person, the court shall, on demand, direct the release of seized or impounded animals upon a showing of proof of ownership. Any question regarding ownership shall be determined in a separate hearing by the court where the criminal case was finally adjudicated and the court shall hear testimony from any persons who may assist the court in determining ownership of the animals. If the owner is determined to be unknown to the court or

prohibited or unable to retain possession of the animals for any reason, the court shall order the animals to be released to the appropriate public entity for adoption or other lawful disposition. This section is not intended to cause the release of any animal, bird, reptile, amphibian, or fish, seized or impounded pursuant to any other statute, ordinance, or municipal regulation. This section shall not prohibit the seizure or impoundment of animals as evidence as provided for under any other provision of law.

(j) It shall be the duty of all peace officers, humane society officers, and animal control officers to use all currently acceptable methods of identification, both electronic and otherwise, to determine the lawful owner or caretaker of any seized or impounded animal. It shall also be their duty to make reasonable efforts to notify the owner or caretaker of the whereabouts of the animal and any procedures available for the lawful recovery of the animal and, upon the owner's and caretaker's initiation of recovery procedures, retain custody of the animal for a reasonable period of time to allow for completion of the recovery process. Efforts to locate or contact the owner or caretaker and communications with persons claiming to be the owner or caretaker shall be recorded and maintained and be made available for public inspection.

ABC News

Cruelty to Pet Owners?

Some Owners Accuse Their SPCA Chapter of Taking Their Pets and Selling Them

Commentary By John Stossel

June 3, 2005 —

SPCAs have an image of being animal rescuers. And there's no question that the many Societies for the Prevention of Cruelty to Animals around the country do a lot of good work, rushing in to save animals from abusive people.

But some people who've had animals taken away by animal rescuers say some SPCAs have acted like petty tyrants on power trips. They say they use their police powers to take away people's animals, even when the animals don't need rescuing.

I found that hard to believe, but lots of people have been saying that their local SPCA has wrecked their lives.

We spent a year investigating the SPCA, looking at 50 cases from New York to California. Many people think that SPCAs have a national headquarters, but SPCAs are really separate, independent operations located in towns across the country. Some animal owners claimed that when they became overextended in caring for their animals, an SPCA accused them of neglect, confiscated their animals and sold them.

The SPCAs then keep the money.

'Equine Shopping Mall'

One case we followed involved a New Jersey SPCA office accusing horse owner Joe Stuebing of starving his animals.

He said the horses had lost weight simply because they were sick and he was overwhelmed. But a local SPCA filed charge after charge against him for what it said was inhumane treatment. Then they took custody of his horses, some of which were champion bloodlines valued together at almost $1 million.

Stuebing says that the day after the SPCA took custody of his horses at Stuebing's own barn, they invited people to his farm to take his horses out from under him. "This was like an equine shopping mall. Like it was ripe for the pickings," Stuebing told "20/20."

"They are a self-righteous group of people that are in it for money," said Stuebing. "They don't care about the horses. They don't care about anything else except money."

That's a charge we heard repeatedly from people who lost animals.

Sometimes the owners hire lawyers and file appeals, but they rarely win. Judges usually side with the SPCAs. After all, the animal rescuers are the experts, aren't they?

SPCA Leader Crafts Media Image

Dave Garcia has confiscated thousands of animals in several states. He heads rescue operations for the Dallas SPCA, one of the biggest such organizations in America.

You get a sense of how important he considers his work when you listen to his opinion about the kind of people who abuse animals.

"If they beat a dog to death, then it's just a step up to beat a co-worker, or beat a classmate or and then a step up to & kill someone and then a step up to do a mass murder," Garcia told "20/20."

On local television, Garcia is often portrayed as a savior rescuing animals. And he has saved a lot of animals from abusive people.

"I should not have to warn someone to take care of their animals," said Garcia. "If they're here to make money with them, then take care of them."

Garcia led an effort to get Texas politicians to pass a law saying once a Justice of the Peace approves one of the SPCA's confiscations, an owner can't do anything about it.

Under Garcia's leadership, the Dallas SPCA has seen penalties against animal owners quadruple.

The SPCA invites television crews along on their raids confiscating animals. Such broadcasts spur the public to make big donations — a total of $6 million in

2003 to the Dallas SPCA -- which helps pay Garcia's $80,000 annual salary.

One of those raids occurred at Renee Moore's dog kennel, with TV reporters stating 120 dogs lived in deplorable conditions.

But Moore's dogs are show dogs. Some of them were thin, she said, because they were nursing large litters of puppies. Vets and breeders told us it can be normal for a dog's ribs to show when a dog is nursing lots of puppies.

But the SPCA took custody of all of Renee's dogs, including award winners -- worth up to $600 each. After the radio, her vet wrote that while "housing and sanitation needed improvement" and suggested a cutback in the number of animals, he also said "Moore does care about and care for her animals no starvation was evident." A judge upheld the confiscation.

Unable to afford a lawyer, Renee wrote her own lawsuit charging the SPCA with stealing, but the suit was dismissed. Renee's livelihood was destroyed. She and her husband were forced to sell their home and move into a trailer.

"I would like to see them punished for what they've done," said Moore. "And they humiliated me on TV and I'd like them to apologize to me on TV."

'20/20' Follows Garcia on a Raid

All this made us want to see firsthand how Garcia works. So we asked and received permission to go along on an SPCA raid.

Garcia didn't know that our cameraman was a veterinarian, Dr. Gaylon TeSlaa.

Early one morning last September, "20/20" accompanied Garcia as he went with a police officer to a Justice of the Peace to get the warrant needed to raid a dog kennel.

He claimed the owner didn't provide adequate food, water and shelter, and showed photos of what he said were filthy kennels.

After a brief informal hearing, Garcia got permission to raid, which meant he and an armed police officer could go to the kennel without any warning.

Garcia told us to expect to see animals that were urine soaked and fecal stained. "20/20" didn't see that.

TeSlaa said, while there was some neglect because the owner had been away for four days, it was correctable. Since her being away was an unusual event, and she says she'd returned each night to feed her animals he saw no cruelty and certainly no reason to confiscate the dogs. But Garcia saw cruelty and said the dogs needed to be saved.

"Under Texas state law, these animals have been cruelly treated. The definition of cruelly treated is

having to live in your own feces, unsanitary conditions, no food or water," said Garcia.

But when people keep animals, there's routinely feces found in the cages. "That's part of having an animal," said TeSlaa.

Moments after the SPCA finished collecting the dogs, the owner arrived. Pam Chennault said she couldn't believe her dogs were being taken, including her favorite, Gidget.

Despite her protests, she was given an immediate court date and was not allowed to go to the van that held Gidget and her other dogs.

"She was my very first dog," Chennault said while crying.

Challenging the Raid

After raiding her kennel, Garcia took the dogs to the SPCA where the workers cited problems like fleas and mange.

Not that the technicians are experts. In fact, our vet was the only veterinarian in sight. "These pets were not abused. They were not in poor health. None of them were in life-threatening conditions," said TeSlaa.

When I mentioned there was no vet there during the raid, Garcia replied: "We had vets there."

But he didn't. The Texas SPCA later e-mailed us admitting that it didn't, but said in this case that vets weren't needed.

Chennault hired a lawyer and tried to get her animals back, but the court gave her only two hours to prepare her case. She was advised to settle and give her dogs to the SPCA. She did. Most of the dogs were adopted, a few were put to sleep. We don't know what happened to Gidget.

When I told Garcia that our vet didn't think the animals should have been taken, he said, "The judge did."

But the judge permitted the raid because of the data Garcia brought to them. I suggested that he "spins" the evidence. "No, I don't spin them," said Garcia. "The judge looks at the facts. Looks at the probable cause, and the judge makes the decision."

I asked him about the claim that he steals people's animals.

"No, I'm not stealing no one's animals," said Garcia.

He said he dismisses most complaints without any confiscation. Garcia said, "It's about the welfare of an animal."

Tell that to the 50 people we talked to who lost animals to Garcia and other SPCAs.

Joe Stuebing is fortunate that he doesn't keep his horses in Texas, where he would be under the thumb of the Texas no-appeal rule Garcia lobbied for. After

a court ruled the SPCA could take his animals, he appealed, and won, because his farm was raided without a warrant. The SPCA still says he was abusing his horses, but today he has his horses back.

In Texas, Moore could not appeal, and she said she'll never get over what Garcia and the SPCA did to her.

"I was a dog breeder. I was a dog shower," said Moore. "My dogs were my life."

Remember, when considering donations: each SPCA is separately run. Also, the ASPCA is a different organization.

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Court of Common Pleas of Delaware

State v. Sego
Delaware
2006 WL 3734664 (Del.Com.Pl.2006) (unpublished)
Summary:

Fifteen horses were seized by the Society for the Prevention of Cruelty to Animals (SPCA) because the animals were in poor condition. The SPCA sent bills to the owners for feeding, upkeep, and veterinary care, but the owners did not pay the bills. After 30 days of nonpayment, the SPCA became the owners of the horses, and the prior owners were not entitled to get the horses back.

Judge Merrill C. Trader delivered the opinion of the court.

Opinion of the Court:

In this criminal action the defendant, Edwina Sego, seeks the return of three horses seized by the Society for the Prevention of Cruelty to Animals (SPCA) on July 27, 2006. Because of the defendant's failure to pay the costs of holding and caring for the three impounded animals within 30 days after receipt of a detailed billing from the SPCA, ownership of the animals reverted to the SPCA under 3 Del.C. Sec. 7904(c).

The relevant facts are as follows: On July 27, 2006, the SPCA seized fifteen horses in the custody of Edwina C. Sego and Glenn Sego. At the same time,

complaints alleging fifteen counts of animal cruelty were filed against Edwina Sego and fifteen counts of animal cruelty were filed against Glenn Sego.

On the December 8, 2006, Edwina Sego entered a plea of guilty to one count of animal cruelty relating to the cruel neglect of a 5 1/2 month old foal. With the consent of the State, the defendant was placed on Level I probation before judgment for a period of six months. It was a condition of probation that she pay restitution in the amount of $15,000.00 to the SPCA within three months, the court costs, a fine of $500.00, and the victims compensation fund assessment. Under the plea agreement, 12 of the horses would be returned to Mrs. Sego and she agreed to sell those horses. The SPCA claims ownership of the remaining horses and wishes to place them for adoption, but the defendant seeks the return of those horses. A hearing was held on this issue on December 14, 2006.

The horses retained by the SPCA were a bay mare named "Balmy Prospect", a palomino mare named "LD Fancy", and a 2 1/2 month old foal named "May Blossom".

The evidence produced at the hearing established that Balmy Prospect was emaciated when she was seized by the SPCA. The mare has received extensive nutrition while in the custody of the SPCA and has now been placed out for adoption. The palomino mare, LD Fancy, was also malnourished and weighed between 500 and 600 pounds when she was seized by the SPCA. She has been treated for rain rot and now weights between 900 and 1000 pounds. She may be sent out of state for surgery on her hip. May

Blossom, the foal of LD Fancy, was also treated for rain rot.

The SPCA submitted a detailed billing to Mrs. Sego listing the accrued monthly costs of boarding, veterinary, and other costs incurred. Mrs. Sego has not paid these costs within thirty days of receipt of the detailed monthly billing.

The defendant contends that Angela Neeley, the defendant's daughter, has a lien on the horses and is entitled to return of the animals by virtue of this lien. I disagree. The animals were seized on July 27, 2006, prior to the creation of any lien to the daughter. I hold that this lien, if any exists, does not defeat the statutory rights of the SPCA under 3 Del. C. Sec. 7904(c).

3 Del. C. Sec. 7904(c) provides in pertinent part as follows:

Upon a determination that probable cause exists to believe that the animal cruelty or animal fighting laws have been violated by the owner or custodian of any impounded animal, the State and/or the appropriate Society for the Prevention of Cruelty to Animals shall have the right to recover the costs of holding and caring for any animal impounded under this section from the owner or custodian of the animal. Each month, the State or appropriate Society for the Prevention of Cruelty to Animals shall submit a detailed billing to the owner or custodian of the animal, listing the accrued monthly costs of boarding, veterinary and other costs incurred. Notwithstanding any provision of this section or any other law to the contrary, failure of the animal's

owner or custodian to pay these costs within 30 days of the receipt of a detailed monthly billing will result in ownership of the animal reverting to the State or to the appropriate Society for the Prevention of Cruelty to Animals. The provisions of this paragraph shall be applicable notwithstanding the final disposition of the criminal charges.

Under the statute, if probable cause exists to believe that the animal cruelty laws have been violated by the owner the SPCA may seize the animals. It is not disputed that probable cause existed for the seizure of the animals. Secondly, if the SPCA has submitted a detailed billing to the owner listing the accrued monthly costs of boarding and veterinary care incurred, and the owner fails to pay these costs within thirty days of the receipt of the detailed monthly billing, ownership of the animals reverts to the State.

In the case before me, the monthly billing was submitted to Mrs. Sego and she failed to pay the costs within thirty days. Accordingly, the three animals in question reverted to the SPCA.

3 Del. C. Sec. 7904(c) was added to the Delaware Code on March 27, 2002 and the clear purpose of this section is to vest title in the SPCA if it has complied with the provisions of the section. The provisions of that statute apply notwithstanding the final disposition of the criminal charges.

The defendant cites 11 Del.C. Sec. 2311 concerning the disposition of the property validly seized, but that section has no applicability to the case at bar. The disposition of animals seized based on probable

cause that animal cruelty exists is entirely controlled by 3 Del.C. Sec. 7903. I conclude that the SPCA now has ownership of the animals and may place them for adoption. Additionally, I am not persuaded that the defendant can give proper veterinary care for these sensitive animals. The defendant's motion for return of the horses is denied.

IT IS SO ORDERED.

MOTION FILED
DEC 3 1 2007

(2)

No. 07-728

78

IN THE

SUPREME COURT

OF THE

UNITED STATES

CHARLOTTE SPADARO, Petitioner,

v.

CITY OF RIALTO, CALIFORNIA, Respondent.

On Petition for a Writ of Certiorari

to the Supreme Court of California

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* BY AMERICAN DOG OWNERS ASSOCIATION

IN SUPPORT OF PETITIONER

Maureen Hauch, Executive Director,
Dawn Capp, Esquire, Board Member,
American Dog Owners Association
PO Box 186, Castleton, NY 12033
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MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*

Pursuant to Rule 37.2 (b) of this Court, Movant requests leave to file the accompanying brief of amicus curiae, in support of the Petition for writ of certiorari. All parties were timely notified of the intent to file this brief, under Rule 37.2 (a). Petitioner consented. Respondent withheld consent.

Our group, the American Dog Owners Association, represents dog owners nationwide.

This case is of significant interest to all pet owners in America, and we submit that our standing and expertise is of value in this case.

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Respectfully submitted,

Maureen Hauch, Executive Director,
Dawn Capp, Esquire, Board Member,
American Dog Owners Association

No. 07-728

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"Experimental Evaluation
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in Owned Cats"
(Journal of Veterinary Behavior:
Clinical Applications and Research,
July-August, 2007) (abstract of article) 4

Interest of *Amicus Curiae*

We submit this *amicus curiae* brief in favor of this Court granting review for Petitioner.[1]

Our group, the American Dog Owner's Association, represents and supports the rights of dog owners nationwide.

We submit that a full adjudicative hearing must not be replaced by a mere probable cause hearing upon the deprivation of someone's pet.

This case presents an issue that is of great importance to all pet owners. The threat to our nation's pet owners is real, and of great concern.

Reasons for Granting the Petition

a. Conflicting State Decisions

Petitioner appeals a California Court decision which conflicts with the decision of the Ohio Supreme Court on the federal issue of due process, relating to the keeping of animals.

The Ohio Court, in *State (of Ohio) v. Cowan*, 103 Ohio St 3d 144, 814 NE 2d 846 (Ohio 2004),

[1]Notice of intent to file this brief was timely received by all parties under Rule 37.2 (a). Petitioner consented and Petitioner participated in the writing of this brief. Respondent withheld consent. No monetary contribution has been made but Petitioner paid the printer.

found unconstitutional a statute in which the only meaningful opportunity the individual had to be heard on the issue of whether an animal was indeed vicious or dangerous was at the individual's criminal trial.

The California penal code section in the present case is very similar, in that some individuals will receive a criminal trial after the seizure of one's animals, should the prosecutor choose to charge.

Whereas the California Court in the present case wrote that procedural due process was satisfied by a hearing merely on the reasonableness of the seizing officer's belief, with no hearing needed as to the actual conditions of the animals seized, the Ohio Court had a completely different interpretation of the process due the pet owner.

The Ohio Court found that the right to due process is "the right to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, such is not due process of law."

b. Owning a Pet

Ownership is a concept which bespeaks responsibility as much as anything else.

The owner of an apartment building may benefit from the rents collected, but is responsible for providing safe premises for tenants and visitors

alike. Sometimes, the liability a landlord will incur as a result of ownership will outweigh the value of owning the property. Ownership is indeed all about responsibility.

To own a pet is to enjoy and love a pet, but also to commit to being responsible for a pet. It is a commitment which an individual makes to his or her animal.

Those who abuse animals should not have animals. But, those who provide well for their animals should not have their cherished companions taken needlessly.

The only way to fairly determine whether an individual should be deprived of his or her animal is to provide a full adjudicative hearing. The test of probable cause is not enough.

The situation of animals being the asset seized by the government means that more attention should be paid to the issue of due process, not less.

If a car is seized from someone, the individual may care but the car does not care. If an animal is seized from someone, both the individual cares and the animal cares.

That the animal cares has been legislated to be in the public interest. Federal law has codified the public interest in the wellbeing of animals. State laws nationwide have done the same.

The veterinary community speaks of separation anxiety syndrome in pets. Appendix A shows the full text of a reference article entitled "Separation Anxiety Syndrome in Dogs and Cats" published in the Journal of the American Veterinary Medical Association, in the June 1, 2003, issue.

The article speaks of separation between pets and their owners leading to pets suffering from anxiety, panic, and depression. The article speaks to separation anxiety in pets who have been separated specifically from their "preferred associate" or "favorite person".

We are not speaking merely of animals which may find themselves without a person. We are speaking of animals who find themselves without their "favorite person".

Appendix B shows the abstract of a study entitled "Attachment Behavior in Dogs (*Canis familiaris*): A New Application of Ainsworth's (1969) Strange Situation Test" published in the Journal of Comparative Psychology, in the September, 1998, issue.

This study found that a dog's relationship to humans is analogous to "child-parent" attachment behaviors and "mother-infant" interactions.

Appendix C shows the abstract of a study entitled "Experimental Evaluation of Attachment Behaviors in Owned Cats" published in the Journal

of Veterinary Behavior: Clinical Applications and Research, in the July-August, 2007, issue.

Similarly, this study found that cats manifest attachment behaviors toward their owners, with results consistent with studies of "children attached to their mothers".

Thus, not only is it unconstitutional to deprive an individual of his or her animals without due process, these studies show us that it is abusive to the animals to needlessly deprive them of their happy homes and their favorite people.

Pet owners are the perfect targets for false accusations. The abuse of an animal is so viscerally disgusting that any thought of it may cause people to cut short their more deliberative tendencies. But this is not only harmful to the individuals, it is harmful to the animals.

When the government has seized animals and cannot prove that the seizure was actually necessary, the government should immediately return these animals to their owners, without charge. The test of probable cause is not enough, neither for the owners nor for their animals.

Respectfully submitted,
Maureen Hauch, Executive Director,
Dawn Capp, Esquire, Board Member,
American Dog Owners Association

JAVMA, Vol 222, No. 11, June 1, 2003 Vet Med Today: Reference Point

Reference Point

Separation anxiety syndrome in dogs and cats

Stefanie Schwartz, DVM, MSc, DACVB

Distress associated with separation from a preferred companion or group has been identified among individuals from a variety of disparate species, including birds,1,2 dogs,3,4 cats,5,6 horses,7-12 pigs,13 sheep,14 goats,14,15 cattle,16,17 cetaceans,18,19 and primates (including humans).20-23 In human medicine, the term **separation anxiety disorder (SAD)** is used to refer to excessive and recurrent distress associated with separation from home or major attachment figures.23 It is seen primarily in children and adolescents,23,24 but is increasingly identified in adults of all ages.24,25 Similarly, dogs may experience a negative emotional reaction when their preferred associate (favorite person or pet companion) is absent.3,4 Dogs that are sent to board at kennels, hospitalized at veterinary clinics, abandoned by the roadside, surrendered to shelters, or left alone at home and dogs that survive the illness or death of a pack member may suffer various degrees of anxiety.3,26 In dogs, the degree of distress is likely dependent, in part, on the degree of attachment to the absent figure.27 Domestic cats have traditionally been viewed as asocial or even antisocial. However, a growing body of evidence

suggests that cats do form social bonds28-32 and may develop separation reactions similar to those in dogs.5 In people, SAD is clearly distinct from panic attacks and other severe emotional reactions.23 In contrast, separation reactions in dogs and cats are often characterized by extreme emotional and behavioral reactions, and the degree of anxiety displayed by some dogs is consistent with the diagnostic criteria for panic attacks and other more serious psychiatric disorders in people, some of which are accompanied by intense physiologic and cognitive symptoms of fear and discomfort.23 For example, in a person, self-mutilation would be considered a serious symptom and would prompt revision of a diagnosis of SAD to a diagnosis of an obsessive-compulsive disorder or another serious diagnostic consideration. In pets, on the other hand, separation reactions may be characterized by psychogenic grooming that results in serious self-inflicted injury. It seems, therefore, that separation reactions in dogs and cats have much in common with phobic disorders and panic attacks in people. Anxiety can escalate to panic, and coping mechanisms may fail when the apparent jeopardy of a context is inflated, as affected animals overreact to ambiguous or unpredictable situations. In 1 study,33 the ambiguity of a situation was shown to exacerbate anxiety in children with separation issues, and this may be relevant to dogs and cats that exhibit dysfunctional separation behavior. In addition, there may be a clinical association between SAD in people and the development of anxiety disorders,24 and there is some evidence that suggests that this may be true in dogs as well.34 Some elements of separation reactions in dogs and cats may share similarities with aspects of bipolar affective disorders in

people.23 People with bipolar affective disorders experience cycles of manic-depressive illness that may last for days or months, during which their mood shifts dramatically between agitation and lethargy. Similarly, during a separation period, a dog or cat with a severe separation reaction may oscillate between relative manic (agitated) states (eg, episodes of vocalization and destructiveness) and depressive (subdued) states. Clearly, the signs of separation anxiety in dogs and cats are unique and frequently more insidious, compared with the relatively milder psychiatric symptoms that define SAD in people. Therefore, a diagnostic label of separation anxiety in dogs and cats is inadequate, because it does not encompass the range and intensity of behaviors exhibited by emotionally reactive pets. Given the complexity and diversity of the clinical and subclinical signs related to separation reactions in veterinary patients, the term of **separation anxiety syndrome (SAS)** has been introduced.5 Separation anxiety syndrome in dogs and cats represents a group of emotional, behavioral, and physiologic responses that vary in intensity and clinical appearance. This redefinition highlights new insights into the condition, and the present review attempts to examine more closely how sociality and domestication in dogs and cats may be a precursor to the development of the dysfunctional social ties that characterize SAS. Parallels will be drawn between the overdependence of pets with SAS and opioid drug dependence. As pets live longer, the incidence of SAS in geriatric pets is predicted to rise, and this condition will have to be distinguished from other ailments. Finally, grief in pets is discussed for the first time as a unique form of SAS.

Sociality in Dogs and Cats

To the best of our knowledge, separation reactions are not a characteristic of asocial species, for without the proclivity toward formation of social bonds, separation- related anxiety would not exist.35 By definition, individuals that belong to social species are sensitive to the absence of an attachment figure.2,3,5,7-9,12-17,19,20-22 Individual experiences, inborn emotionality, degree of attachment, and species-specific sociality determine the specific signs and the intensity of those signs in animals with separation reactions. In essence, therefore, development of separationrelated distress can be viewed as a measure of sociality (ie, the tendency of individuals to associate or assemble in groups). Sociality is a plastic phenomenon that is, in part, neurologically programmed in dogs and cats. Puppies are most susceptible to social exposure when they are between 6 and 13 weeks old.36 A similar phenomenon is identified in kittens between 2 and 7 weeks old.32 By 8 weeks of age, puppies and kittens are increasingly defensive, and as the CNS matures, social interactions become more tentative.36 Puppies and kittens can thrive only when raised with nurturing social interaction. Puppies raised in total isolation, for example, develop abnormal responses to new environments and significant increases in the threshold to pain response.36 Kittens raised in isolation may become more aggressive. In fact, early separation from the queen can result in fear of, or aggressiveness toward, cats and people, learning disabilities, increased activity, and increased predatory behavior.6,36 Early human handling helps to produce more tame kittens and puppies that are more adaptive to change (stress) throughout their lifetimes. Just a few minutes a day is all that is necessary, although kittens or puppies < 2 weeks old

should not be overly handled.32,36 The social behavior of dogs reflects their descent from wolves, which have a highly structured social organization,37-39 and the domestication of dogs was likely facilitated by intrinsic social parallels with people. In both wolves and people, for instance, group cohesion and cooperation are essential to individual survival and species success. Among wolves and dogs, establishment of a dominance hierarchy defines the social structure of the pack. However, emotional attachments between pack members is the glue that cements and solidifies the social unit. A recent study40 suggests that during the process of domestication, dogs may have developed particular social-cognitive abilities that enable them to be more skillful at reading human communicative signals. These skills surpass those of the great apes and wolves and may be apparent in puppies that are only a few weeks old and have had limited human contact.40 Social behavior in domestic cats is quite complex. Hierarchies within a group of cats are formed with subtle and sometimes not so subtle displays of dominance and submission28,31,32 and with multifaceted social communication through facial expression,32 body posturing, 32 and vocal communication.32,41 Affiliative behavior, which facilitates proximity and intimate social interaction, is common among domestic cats.28 Preferential alliances (what humans might call friends) are consistently seen and reflected by a cat's choice of partners for sleeping; resting, sitting, and playing together; sharing food; allogrooming; and allorubbing. Members of a stable social group of cats have been shown to touch each other as much as half the time. Females may cooperate in rearing their young.28 Most pet cats engage in frequent social

interactions with conspecific housemates, as well as with their owners. In fact, 1 study29 showed that most cats slept with a family member, shared food with people, and greeted their owners at the door. Sociality toward people has been shown to be governed by learned and inherited mechanisms.30 Perhaps one of the major differences between cats and dogs is that dogs generally require ongoing social interaction. Although cats are sociable by nature, as adults they do not require human or feline contact to survive. In addition, there is much wider individual variation in sociality among cats than among dogs, in that some cats are indeed solitary and others more socially dependent. This social variability may be explained in part by the fact that cats have not been systematically domesticated, compared with dogs. Additional insight into the social differences between domestic cats and dogs stems from the observation that social systems may be flexible and frequently depend on environmental resources (eg, abundance of food) and predatory pressures.35 Domestic cats have apparently developed the social skills necessary to cope with fluctuations in population density. For instance, when food is abundant in a restricted but desirable space, cats will tolerate crowding, and aggression may be inhibited.28,29 Social pressures on outdoor cats are driven by the availability of food, the population density of other outdoor cats, and the presence of various dangers. Adjustable group size and sociality are recognized in a variety of other highly social species, including apes42 and cetaceans.43,44 This facultative sociality of domestic cats may help explain the greater range in social affinity among adult cats, compared with the more consistent and, perhaps, obligate sociality of domestic dogs, which have a greater dependence on

group cohesion. The inherent sociality of dogs and cats is fundamental to SAS and, ultimately, to the prevention and treatment of separation reactions.

Adaptive and Maladaptive Separation Reactions in Dogs and Cats

In puppies and kittens, some separation reactions are normal and desirable, as they are important to survival. Young puppies and kittens, for instance, normally emit distress calls when removed from the nest. In fact, a queen will not retrieve a straying kitten unless the lost kitten vocalizes.32 Newborn puppies and kittens first experience separation when the bitch or queen temporarily leaves the nest or when they are removed from the litter and held by human hands. Soon after, these puppies and kittens must shift their normal social attachments from littermates and the dam to their new human owners. Mild signs of SAS, therefore, may be normal in newly adopted young pets as they adjust to separation from their littermates and dam. When these separation reactions are retained beyond the puppy or kitten period, however, they may become maladaptive. In juvenile and adult dogs and cats with SAS, in particular, the distress expressed often seems excessive in context with the actual danger of the situation. The process of domestication appears to have resulted in retention of juvenile behaviors in adults, and the dependence of the young on parental figures is a characteristic of juvenile behavior. Kneading behavior in adult cats that is directed toward a preferred human companion is one example. Although there may be some variability in canine attachment behavior to humans, the canine-human bond is thought to most resemble the mother-infant interaction in people.45 This intimate and mutual bond is part of what makes pet ownership so

gratifying and emotionally satisfying. It may also be what predisposes dogs and cats to the dysfunctional separation reactions that characterize SAS. Both cats and dogs may retain juvenile characteristics of separation distress in the form of a predisposition toward neurotic overdependence on their human owners as part of a genetic byproduct of domestication. Overdependence may be reinforced unintentionally by pet owners. For example, pets may become unused to separation if they are not given the opportunity to learn to cope with time away from their caretakers. 46 Pet owners may be reluctant to leave young pets and, thereby, unintentionally encourage neurotic social attachment.

Behavioral Aspects of SAS

Sociality is fundamental to the behaviors associated with SAS. The clinical signs of SAS often reflect a pet's frustration with and anxiety caused by social separation and, specifically, separation from an important attachment figure. Separation-related behavior problems in dogs and cats vary widely in form and degree, even in the same individual. Clinical signs are seen primarily during an owner's absence, although anxious behaviors any time during the perideparture period may be attributed to SAS. For instance, anticipatory distress is common in the period preceding the owner's actual departure. 3,4 Dogs learn the habitual sequence of events leading to an impending departure, and anxiety often begins before the owner leaves. Persistent shadowing or following of the owners and extremely excited greeting of a returning owner are associated with SAS in dogs. Signs of SAS in dogs include agitation (eg, restlessness, pacing, and jumping); physiologic abnormalities (eg, vomiting, salivating, trembling,

hyperventilating, and tachycardia); elimination abnormalities (eg, urination and defecation, with or without diarrhea); vocalization (eg, whining, whimpering, barking, and howling); destruction (eg, escape attempts such as chewing, digging, scratching, and jumping through doors or windows); self-mutilation (eg, excessive grooming, hair pulling, and self-directed aggression); signs of depression (eg, social withdrawal, lethargy, inappetence, and submissive or fearful postures or facial expressions); and aggression (eg, mouthing, nipping, growling at, or biting the owner at departure). Signs are typically most intense within the first 15 minutes after the owner's departure, although they may persist much longer or occur intermittently during isolation. 3,4 They may be seen alone or in any combination and may progress in intensity or change in appearance over time. For example, agitation may be the only sign or may simply be the first or last in a sequence of other SAS-related signs, such as inappropriate elimination in the form of diarrhea or urination. Signs of depression (eg, inactivity and social withdrawal) may be the only indication of SAS in some dogs or may follow a period of agitated destructiveness and excessive vocalization in others. Signs of SAS must also be differentiated from similar signs in dogs and cats with other disorders.3,5,46 There are 3 primary categories of misbehavior in cats and dogs with SAS3,5,46: inappropriate elimination, vocalization, and destructiveness. Inappropriate elimination may be intentional (eg, territorial marking to release anxiety) or an involuntary physiologic effect of extreme distress (eg, stress-induced diarrhea or urination). In 1 study,5 house soiling was the most common problem in cats with SAS. In this study, inappropriate defecation was

more common in neutered female cats than in neutered male cats. Seventy-five percent of cats that urinated inappropriately in association with the absence of an attachment figure did so exclusively on the owner's bed. Excessive or persistent vocalization, typically attention-seeking distress calls, is reported in both dogs and cats with SAS. Destructiveness among dogs with suspected SAS may include desperate escape attempts made during confinement to a crate or restricted space. In such cases, this barrier anxiety may be similar to claustrophobia (which can occur independently of separation issues) and should be distinguished from separation-triggered misbehavior. In cats with SAS, destructiveness was observed in neutered males but not in neutered females.5 However, not all destructive behavior that occurs in a owner's absence is due to a separation reaction. Accidental destruction of property by an unsupervised playful and inquisitive pet must be included in the differential diagnosis of destructiveness.3,5,46 Other less common signs of SAS are also recognized. 3,46 Self-mutilation, such as psychogenic licking or compulsive tail chewing, for instance, may be associated with separation reactions in both dogs and cats. In addition, dogs may injure themselves during attempts to push, chew, and scratch their way out of a confining enclosure. Puncture and laceration wounds may result from protruding metal wires or sharp edges of damaged crates. In these cases, injury is not selfinflicted but rather a consequence of destruction. Psychogenic overgrooming appears to be more common in female cats with SAS than in males and may be underreported.5 Another less frequent, but not unknown, sign of SAS is aggressiveness.3 Anticipatory anxiety in some dogs may be so intense

that they begin to nip or bite, apparently to disrupt the owner's preparations to depart or prevent their approach to the door. Similar behavior associated with an owner's impending absence has not been identified in cats. Nonetheless, cats can learn to nip to gain attention; therefore, it would not be inconceivable that cats, like dogs, with SAS would act aggressively toward their owners as they exit the home. The frequently progressive and often intense signs of separation distress displayed by some dogs and cats may have much in common with drug dependence and acute withdrawal from opioids. Beyond the genetic and learned components of SAS, there may be an underlying biochemical mechanism that may have parallels to opioid drug dependence. This is supported by the finding that some signs of SAS may be alleviated with opiates. Low doses of oxymorphone and morphine were shown to profoundly reduce crying in briefly isolated puppies,47 and physiologic measures of separation distress increased slightly in cattle treated with the opiate antagonist naloxone.17 Thus, it is possible that opiate agonists might be effective in the treatment of SAS in dogs and other species.

Predisposing Factors for SAS

Common risk factors associated with SAS in dogs include a history of traumatic separation, inexperience with being left alone, excessive greetings and prolonged departures by owners, changes in the owner's routine (dogs susceptible to SAS may develop clinical signs in response to even slight changes in routine), relocation to a new home, addition of a new pet sitter, and a death in the family (conspecific or other family member). In addition, dogs that shadow or follow their owners or that are neutered, purebred, or have a single owner are more

likely to develop SAS.3,46,48,49 One study50 suggested that purebred dogs may respond better to treatment than dogs of mixed breeding, although this deserves further investigation. Risk factors for SAS in cats5,51 appear to be consistent with risk factors in dogs and include having an owner who works long hours, a change (new schedule or extension) in the owner's work schedule, frequent business or vacation travel by the owner, an increase in the time the owner spends with family or friends, development of a new romantic involvement for the owner, departure of a family member (eg, through divorce or death), and death or abrupt removal of another pet. In addition, cats with a history of shelter adoption after 3 months of age, cats that follow their owners around the house, neutered cats, and cats owned by a single individual are more likely to develop SAS. Additional investigation into SAS in cats is warranted.

Unique Manifestations of SAS in Dogs and Cats

SAS in geriatric patients—Older pets, like older people, may be less adaptive to change and stress in general. In particular, normal senile changes may reduce the ability of aging pets to cope with separation from attachment figures and removal from or changes in familiar surroundings. As pets live longer than ever before, SAS may become more common in geriatric patients. Underlying medical problems can reduce an aging pet's emotional adaptability and cognitive capacity; therefore, underlying medical conditions should be considered in older pets with behavioral disturbances, including SAS.52,53 In my experience, for example, a sudden onset of SAS in middle-aged dogs may be associated with hypothyroid disease. Metabolic diseases and other physical ailments (eg, deafness, blindness, and

arthritis) must be considered when aging pets show behavioral changes. One study52 reported that concurrent age-related physical ailments, including, but not limited to, degenerative joint disease and renal disease, were likely to exacerbate behavior problems. However, the same study also determined that behavior problems, including SAS, frequently occur in older pets in the absence of any health issues. Nevertheless, SAS can emerge in older dogs without any previous history of separation reactions. Old dogs with behavior problems, including SAS, often benefit from behavioral therapy.52 In cats, SAS may be more common among aging females than males, possibly because of sex-based differences in feline social behavior.5 A thorough physical evaluation, including laboratory analysis of blood and urine, remains an important part of the workup of cats and dogs with signs of SAS, regardless of age. Cognitive dysfunction must be ruled out in older dogs and cats suspected of having SAS because of the overlapping clinical features of these disorders. Hypervocalization,nonresponsiveness, disorientation, and changes in the sleep-wake cycle and feeding patterns may be suggestive of cognitive dysfunction syndrome in dogs and must be distinguished from signs associated with SAS.54-57 A clinical entity resembling cognitive dysfunction syndrome has been identified in geriatric cats,58 and amyloid plaques similar to the senile neural plaques that characterize Alzheimer's disease in humans and cognitive dysfunction syndrome in dogs have been identified in cats with signs of cognitive dysfunction.56 In cats and dogs, cognitive dysfunction syndrome has been distinguished from SAS and other clinical considerations and may respond temporarily to treatment with selegiline.

Grief as a form of SAS in dogs and cats—Grief can be viewed as the most extreme separation reaction among social animals. Public mourning and private expressions of grief are considered normal human responses following the death of a family member or friend,23 and feelings of sadness, insomnia, weight loss, and decreased appetite are recognized symptoms of loss in people. The stages of grief in humans have been defined59 and reflect the cognitive and emotional process of coping with death. Unlike people, it is unclear whether animals are able to cognitively process the concept of death. Regardless, it is not strictly important whether dogs and cats cognitively understand that a preferred companion has died or been permanently or temporarily removed. They may develop signs of emotional distress simply as a result of the absence of this individual. Separation anxiety syndrome is a reaction to separation itself. Thus, dogs and cats may indeed exhibit behaviors that reflect the emotional impact of the death of a close companion. Separation reactions in dogs and cats may be exacerbated by the moods of their human caretakers who may be mourning the death of the same person or pet. Signs of lethargy or agitation, social withdrawal or uncharacteristic overdependence, anorexia, and other changes may develop. In addition, stress can trigger latent or subclinical disease. Signs of profound or persistent depression and anxiety may justify referral to a board-certified veterinary behaviorist and the use of psychoactive medications, but most dogs and cats adjust to the death of an attachment figure within several weeks.

Treatment of SAS

Treatment of SAS in dogs and cats should focus on managing clinical signs in the individual patient and

should consider the pet's needs for social interaction, intellectual stimulation, and exercise.3,5,46 Pets whose emotional, psychological, and physical needs are met regularly and reliably will be less prone to develop the dysfunctional overdependence and anxious misbehavior that characterize SAS. Increased attention in the form of interactive play, petting, and grooming should be scheduled such that the caretaker's planned absence coincides with the pet's desire to rest. In newly introduced dogs, the progression of initial mild signs of SAS (due to separation from littermates, dam, or previous owners) or sensitization to SAS that may emerge later in life may be reduced by providing bedding near the new owners overnight (social animals naturally remain together for safety while sleeping). Events that occur during the perideparture period (ie, the period just before, during, and after the departure of the preferred associate) can reinforce a pet's tendency toward SAS and, therefore, should be as calm as possible. For example, greeting rituals are normal social behaviors in both dogs and people. The exuberance of some human greetings, however, may create conflict and reinforce undesirably chaotic greetings by the dog. Overly enthusiastic greetings (eg, whining, jumping, or pacing) laden with redirected (eg, scratching) or displaced (eg, running to get a toy) activities are typical of dogs with SAS.3,48 In addition, long departure rituals characterized by a melodramatic or anxious attitude on the part of the owner may cause dogs and cats to view the owner's departure as an anxiety-provoking event, exacerbating the degree of anxiety during separation. In dogs, departures should be preceded with a long leash walk appropriate to the individual's age and level of activity and to prevailing weather

conditions. Presentation of an attractive chew toy, such as a rawhide bone or hollow toy filled with treats, promotes a positive association with departure and provides an appropriate oral outlet for anxiety. Disruption of a predictable departure sequence and progressive desensitization to the owner's habitual departure routine are also helpful.46,50 Some dogs with SAS may also have other anxiety-related issues, such as thunderstorm phobia.34 Thus, potential causes of anxiety must be thoroughly explored, and the treatment plan must address all important causes. Confined house cats have a restricted territory and, consequently, reduced options for physical and intellectual stimulation. Cat owners should compensate by providing additional distractions, such as interactive play with attractive toys, and many of the same activities suggested for dogs. Targets of SAS-associated elimination should be made inaccessible or unattractive. The treatment of house soiling in cats is described in detail elsewhere.60-63 The addition of another pet to keep a pet with SAS company is not necessarily a solution to the problem. It is thought that the pet's emotional response is caused by the absence of a particular individual and not social isolation as such. Tuber et al64 measured the behavioral and glucocorticoid responses of adult domestic dogs in a shelter situation following removal of a kennel mate and placement in a novel environment for 4 hours. Measures of stress were unaffected by the kennel mate's presence or absence; however, stress was reduced by the presence of a human caretaker. This study suggests that human companionship may be more important to dogs and may point to a difference in the social relationship of dogs toward people.40 However, these results should

be interpreted cautiously, because glucocorticoid responses to separation may be more reflective of degree of attachment. The absence of an effect following separation from an affiliative conspecific may be attributable to differences in separation from partners that are merely affiliative, compared with separation from partners to which one is emotionally attached.27 Anecdotal evidence suggests that in some cases, the addition of a companion animal may improve an anxious dog's ability to cope with separation from its owner. However, addition of a new pet may make the situation worse if it draws the owner's time and attention away from the already anxious resident pet. New housemates must be gradually introduced, despite the temptation to accelerate the process, particularly when the new pet is intended to ease anxiety in a resident pet. For both cats and dogs, conflicts between new housemates are not unusual. Although such conflicts typically resolve, some pets are incompatible. Thus, the benefits and risks should be carefully considered before adding a new pet to a household with a dog or cat with SAS. The use of psychoactive medication may be necessary for treatment of SAS in dogs and cats if behavior modification alone is unsuccessful. In dogs in particular, psychoactive medication may be needed to control signs of SAS. Dog owners may be less likely to comply with techniques that require more time and effort, such as desensitizing affected dogs to departure cues, and may be more likely to follow simple behavior modifying techniques, such as providing a chew toy at departure.50 In dogs and cats with acute or extreme SAS, such as a reaction to the death of an attachment figure or substantial destruction of property, use of a medication with predictable effects and a rapid onset is important.

Alprazolam and other benzodiazepines are rapidly absorbed.65 In cats, triazolam is an attractive alternative to diazepam, which has previously been associated with adverse effects, although no problems have been recently reported.66 Tricyclic antidepressants may require several weeks to take effect65 and may be more appropriate for long-term management. Clomipramine has been successful for the treatment of SAS in dogs.67-69 However, in 1 study,69 administration of clomipramine without concomitant behavioral treatment was unsuccessful in controlling separation-related behavior problems, whereas behavior modification alone was successful in reducing the severity of clinical signs. Psychoactive medication may be an important complement to behavioral treatment, but is unlikely to replace the need for modification of the pet's lifestyle, which is fundamental to the problem. A CBC, serum biochemical profile, urinalysis, and thyroid function tests are recommended prior to administration of psychoactive drugs, both to identify underlying problems and to provide baseline values in the case of long-term drug administration. Laboratory tests should be repeated periodically during prolonged drug treatment to detect adverse effects.

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Volume 112, Issue 3, September 1998, Pages 219-229

Attachment Behavior in Dogs (*Canis familiaris*): A New Application of Ainsworth's (1969) Strange Situation Test

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Abstract

Fifty-one owner–dog pairs were observed in a modified version of M.D.S. Ainsworth's (1969) Strange Situation Test. The results demonstrate that adult dogs (*Canis familiaris*) show patterns of attachment behavior toward the owner. Although there was considerable variability in dogs' attachment behavior to humans, the authors did not find any effect of gender, age, living conditions, or breed on most of the behavioral variables. The human–dog relationship was described by means of a factor analysis in a 3-dimensional factor space:

Anxiety, Acceptance, and *Attachment.* A cluster analysis revealed 5 substantially different classes of dogs, and dogs could be categorized along the secure–insecure attached dimensions of Ainsworth's original test. A dog's relationship to humans is analogous to child–parent and chimpanzee–human attachment behavior because the observed behavioral phenomena and the classification are similar to those described in mother–infant interactions.

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No. 07-728

IN THE

SUPREME COURT

OF THE

UNITED STATES

CHARLOTTE SPADARO, Petitioner,

v.

CITY OF RIALTO, CALIFORNIA, Respondent.

On Petition for a Writ of Certiorari

to the Supreme Court of California

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* BY JON ROLAND OF THE CONSTITUTION SOCIETY

IN SUPPORT OF PETITIONER

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No. 07-728

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*

Pursuant to Rule 37.2 (b) of this Court, Movant requests leave to file the accompanying brief of amicus curiae, in support of the Petition for writ of certiorari. All parties were timely notified of the intent to file this brief, under Rule 37.2 (a). Petitioner consented. Respondent withheld consent.

Our group, The Constitution Society, is dedicated to research and education on the principles of Constitutional republican government.

This is a significant case, a case which is of great interest to all those who care about Constitutional protections.

Our group is committed to protecting the Constitution for all citizens. We submit that our dedication and expertise is of value in this case.

Respectfully submitted,

Jon Roland
President and Founder,
The Constitution Society

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Interest of *Amicus Curiae*

This *amicus curiae* brief is submitted in favor of this Court granting review for Petitioner.[1] Review in this case will serve to protect our citizens' Constitutionally guaranteed property rights.

Our group, The Constitution Society, is a private, non-profit organization dedicated to research and public education on the principles of Constitutional republican government. We publish documentation, engage in litigation, and organize local citizens groups to work for reform.

Our organization was formed in response to the growing concern that noncompliance with the Constitution of the United States is creating a crisis of legitimacy that threatens freedom and civil rights.

Reasons for Granting the Petition

a. Due Process

Due process is a Constitutional guarantee and this Court has found that the right of citizens to due process cannot be legislated away.

> "With faithfulness to the constitutional union of the States, we cannot leave to the

[1]Notice of intent to file this brief was timely received by all parties under Rule 37.2 (a). Petitioner consented and Petitioner participated in the writing of this brief. Respondent withheld consent. No monetary contribution has been made but Petitioner paid the printer.

States the formulation of authoritative laws, rules and remedies designed to protect people from infractions by the States of federally guaranteed rights." *Chapman v. California* 386 US 18 (1967)

"It is manifest that it was not left to the legislative power to enact any process which might be devised. The (due process) article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave congress free to make any process 'due process of law,' by its mere will." *Murray v. Hoboken Land* 59 US 272 (1855)

A State may govern in its own way "unless in doing so it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts* 291 US 97 (1934)

Yet, Petitioner shows how America's pet owners still face the permanent deprivation of their cherished animals upon merely a showing of probable cause, with the State Courts allowing State politicians to legislate this as the process due. A clear, direct decision of this Court is needed to end this once and for all, nationally.

b. Deprivation

The deprivation of property requires due process, beyond mere probable cause. A decision of

this Court is needed to assert the fundamental differences between the probable cause elements of the Fourth Amendment and the due process clauses of the Fifth and Fourteenth Amendments, as they relate to the seizure and deprivation of people's property.

In *Connecticut v. Doehr*, 501 US 1 (1991), this Court found that a showing of probable cause is insufficient to satisfy due process in situations of deprivation, even in situations of temporary or partial impairment to property rights.

This Court found that a hearing of probable cause alone presents too great a risk of erroneous deprivation.

Petitioner appeals a State Court decision which provides only a hearing of what the seizing officer believed, as opposed to a hearing on the actual facts in light of all the evidence presented. Petitioner appeals a decision which permits a finding of liability upon only that belief of the seizing officer, rather than on any actual adjudicated responsibility.

> Attachment "merely because the plaintiff believes the defendant is liable ... would permit the deprivation of the defendant's property when the claim would fail to convince a jury ... The potential for unwarranted attachment in these situations is self-evident, and too great to satisfy the requirements of due process absent any countervailing consideration." *Connecticut v. Doehr*, supra.

In *United States v. James Daniel Good Real Property et al*, 510 US 43 (1993), the government agency argued that compliance with the Fourth Amendment suffices when the government seizes property for law enforcement purposes. This Court disagreed.

This Court found that the due process clauses of the Fifth and Fourteenth Amendments govern.

"The seizure of property implicates two 'explicit textual sources of constitutional protection,' the Fourth Amendment and the Fifth' ... The question is not which Amendment controls but whether either Amendment is violated." Ibid.

This Court found that the Fourth Amendment was tailored explicitly for the criminal justice system and that its initial protections are "only the first stage of an elaborate system". Ibid.

This Court found that the Fourth Amendment is not the beginning and end of Constitutional inquiry into seizure. This Court found that when the government seizes property not to preserve evidence but to assert ownership and control over the property itself, the government action must comply not only with the Fourth Amendment but with the due process clause.

This Court found, "Though the Fourth Amendment places limits on the Government's power to seize property for purposes of forfeiture, it does not provide the sole measure of constitutional protection

that must be afforded property owners in forfeiture procedures." Ibid.

This Court noted that the purpose of the forfeiture statute in question in that case was not to "deprive innocent owners of their property." Ibid.

This Court criticized the procedure in that case for offering "little or no protection to the innocent owner" and further criticized the procedure insofar as the "judge need determine only that there is probable cause to believe" the claim and that the government "is not required to offer any evidence on the question of innocent ownership or other potential defenses a claimant may have." Ibid.

This Court found that "even if the ultimate judicial decision is that the claimant was an innocent owner", still this "would not cure the temporary deprivation that an earlier hearing might have prevented." Ibid.

Petitioner asserts that, in her case, there is not even any further hearing provided for an ultimate judicial determination beyond the probable cause hearing.

Thus, a decision is needed from this Court to protect the rights of innocent pet owners, from the erroneous deprivation of their beloved animals.

This Court found in *Giaccio v. Pennsylvania* 382 US 399 (1966) that due process must be met whether the action is penal or civil, and that due process is violated by the government imposing the

costs of prosecution upon an individual not found to be guilty, criticizing a law which provided the State with a "procedure for depriving an acquitted defendant of his liberty and his property".

c. Fundamental Fairness

This case is about the fundamental fairness of procedural due process.

"Due process of law requires that the proceedings shall be fair" *Snyder v. Massachusetts*, supra.

Petitioner appeals the opinion of the California Court which wrote, "Procedural due process is satisfied by affording the owner or keeper of the animal notice and an opportunity to be heard on the validity of the seizure of the animal" which they define as the "reasonableness of the officer's belief that seizure was necessary" as opposed to whether "the animal's actual condition" justified the action.

The reasonableness of the officer's belief is a question under the Fourth Amendment.

Procedural due process is a question under the Fourteenth Amendment.

The California Court's opinion is that compliance with the Fourth Amendment satisfies due process, exactly the argument of the government agency in *United States v. James Daniel Good Real*

Property et al, supra. Again, this Court disagreed with the government's argument in that case and found that compliance with the Fourth Amendment is not enough. Again, this Court found in *Connecticut v. Doehr*, supra, that attachment "merely because the plaintiff believes the defendant is liable ... would permit the deprivation of the defendant's property when the claim would fail to convince a jury".

Due process requires a fair test and the test of probable cause is not a full, fair test. The test of probable cause is not enough, as this Court found in *Connecticut v. Doehr*, supra, and *United States v. James Daniel Good Real Property et al*, supra. This Court found that the test of probable cause is inherently an incomplete test, only a first step, which must not be confused with the fairness required by due process.

The test of probable cause, or the reasonableness of the officer's belief, is inherently a biased test, in favor of the officer. The test of probable cause is only the officer's belief tested against a pre-existing standard of reasonableness. The test of probable cause does not go further, to test the officer's belief against the actual facts of the case in light of all the evidence presented.

Almost all individuals accused of crimes in which the Courts confer upon them probable cause hearings will be held over to trial, the burden of probable cause almost always met by the State. A great many of these accused will be found not guilty. The Court will have found probable cause but will not have found any guilt. For all these accused,

probable cause was obviously not a full, fair test. It was only the first test.

d. A Decision in this Case is Needed

Petitioner's questions of the case are significant. While certain procedures may vary among situations, Petitioner asks what basic fundamentals of a fair hearing are invariable and Constitutionally guaranteed for all hearings on deprivation of property.

The prior decisions of this Court provide a clear direction for a decision in this case. This Court has specifically found that the tests of the Fourth Amendment, tests of probable cause and the reasonableness of an officer's belief, are not full, fair tests which satisfy due process.

But, when this Court acts, and the State Courts do not heed, the work of this Court is not done.

A decision of this Court is needed to assert what elements of a fair hearing are requisite to any hearing upon deprivation, such as the deprivation of people's animals.

A decision in this case is needed because, obviously, the prior decisions of this Court have not prevented the legislatures and Courts of more than one State from ignoring Constitutional due process protections in the matter of the deprivation of people's animals.

A decision in this case is needed because conflict still persists among the State Courts on this federal, Constitutional issue.

The States may continue to deny United States citizens their Constitutional protections unless a clear, direct decision of this Court asserts what process is due at such hearings. This Court must not allow its decisions to be defied by the States. Fundamental fairness is what is at stake.

This Court found in *Murray v. Hoboken Land*, supra, that legislators may not "make any process 'due process of law,' by its mere will." Yet, more than one State's Courts have allowed their legislators to make the test of probable cause the test of due process, in direct defiance of this Court's findings in the cases we cite. The work of this Court is not done.

Our founding father, Thomas Jefferson, once famously remarked, "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."

We hope that Jefferson's words are not literally true. We hope that no blood need yet be shed for our liberties.

The history of our republic has shown, though, that Jefferson's words have been at least metaphorically true, for the fight to maintain our liberties has been continuous.

Our Constitutional protections are threatened repeatedly by the slide of complacency, by agencies who think they can cut corners because they trust themselves in spite of the Constitution, by the acceptance of a few injustices along the way, that it is only one person's dog, one person's liberty, one person's life.

Our Constitution is a living document, because it lives in us, because we stand up for it and fight for it. When we stop fighting for it, it becomes nothing more than a piece of paper.

What Jefferson understood is that the Constitution will live on only if we always fight for it.

Every time our Constitution is threatened, the patriots in our streets and on our Courts must be there to fight for it. It is why this case is so important. It is why the Supreme Court still, and always, matters.

Respectfully submitted,

Jon Roland
President and Founder,
The Constitution Society

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(4)

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On Petition for a Writ of Certiorari
to the Supreme Court of California

PETITION FOR REHEARING

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AT ISSUE

When the State alleges a criminal act, and the suspect has never been convicted, and the State pursues a civil action to hold the suspect liable for costs of restitution:

Is the reasonable belief of the officer enough to find the suspect liable?

TESTS

Proof beyond a reasonable doubt, by clear and convincing evidence, and by a preponderance of the evidence, are all accepted tests for a final verdict in American jurisprudence.

Probable cause, or the reasonable belief of the officer, are not acceptable tests for a final verdict. These are preliminary tests, for they are one-sided tests.

CONFLICTS

The California Court, in the opinion from which we appeal, has determined, "Procedural due process is satisfied" by a hearing as to the "reasonableness of the officer's belief" of a violation.

The California Court found that a hearing as to the "actual condition" at issue was unnecessary.

So, upon merely a hearing of the reasonableness of the officer's belief, with no hearing ever provided as to the actual condition at issue, Petitioner was found liable for the costs of restitution to the State. As such, Petitioner was provided a preliminary hearing, and was never provided a final hearing, and Petitioner was found liable upon a preliminary standard alone.

We contrast this with the decision of this Court in *United States v. One Assortment of 89 Firearms* 465 US 354 (1984), in which this Court described the burden of proof in civil actions which occur alongside criminal allegations as according to a "preponderance of the evidence".

This Court found in *One Lot Emerald Cut Stones and One Ring v. United States* 409 US 232 (1972) that while the criminal burden was proof beyond a reasonable doubt, the burden of proof in civil actions which occur alongside criminal allegations was according to an "adjudication on the preponderance-of-the-evidence".

This Court found in *Stone v. United States* 167 US 178 (1897):

> "... that the acquittal in the criminal case may have taken place because of the rule required to be proved beyond a reasonable doubt, and that, on the same evidence, on the question of preponderance of proof, there might be a verdict for the United States in the suit in rem".

This Court found in *Morrissey v. Brewer* 408 US 471 (1972) that the first hearing in such a case is:

> "to determine whether there is probable cause or reasonable grounds to believe" that a violation has occurred, and then "there must also be an opportunity for a hearing ... prior to the final decision" and this "hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant" the deprivation.
>
> The individual "must have an opportunity to be heard and to show, if he can, that he did not violate the conditions..."
>
> The Court found that its task in this case was to outline the "minimum requirements of due process".

In the decision of *United States v. $93,685.61 in US Currency* 730 F2d 571 (1984), the Court discussed how probable cause is based upon reasonable grounds for belief, and held:

> "The burden of proof applicable to forfeiture proceedings ... requires that if the government succeeds in showing probable cause to institute forfeiture,

> the burden of proof shifts to the claimant to prove by a preponderance of the evidence" that deprivation was not indicated.

See also *United States v. Premises Known as 2639 Meetinghouse Road* 633 F Supp 979 (1986) and *Leyh v. Property Clerk of City of New York Police Dept.* 774 F Supp 742 (1991).

This Court found in *Cleveland Board of Education v. Laudermill et. al.* 470 US 532 (1985), that due process entails two levels of hearing, one as an "initial check ... a determination of whether there are reasonable grounds to believe the charges ... are true and support the proposed action" and a second, full hearing.

"We hold that if California makes ordinary judicial process available to respondent ... that process is due process" *Lujan v. G&G Fire Sprinklers, Inc.* 532 US 189 (2001).

This Court found in *United States v. James Daniel Good* 510 US 43 (1993):

> "The Government does not, and could not, dispute that the seizure ... deprived him of property interests protected by the Due Process Clause ...
>
> Here ... the seizure of property implicates two 'explicit textual sources of constitutional protection,' the Fourth Amendment and the Fifth ... The proper

question is not which Amendment controls but whether either Amendment is violated.

Nevertheless, the Government asserts that when property is seized for forfeiture, the Fourth Amendment provides the full measure of process due under the Fifth ... That reliance is misplaced.

[Fourth Amendment protections] are 'only the first stage of an elaborate system...'

Neither ... provides support for the proposition that the Fourth Amendment is the beginning and end of the constitutional inquiry whenever a seizure occurs. ... And it is at odds with our reliance on the Due Process Clause to analyze prejudgment seizure and sequestration of personal property.

...the purpose and effect of the Government's action in the present case go beyond the traditional meaning of search or seizure. Here the Government seized property not to preserve evidence of wrongdoing, but to assert ownership and control over the property itself. Our cases establish that government action of this consequence must comply with the Due Process Clauses of the Fifth and Fourteenth Amendments.

> Though the Fourth Amendment places limits on the Government's power to seize property for purposes of forfeiture, it does not provide the sole measure of constitutional protection that must be afforded property owners in forfeiture proceedings. So even assuming that the Fourth Amendment were satisfied in this case, it remains for us to determine whether the seizure complied with our well-settled jurisprudence under the Due Process Clause.
>
> The purpose ... is ... to minimize substantively unfair or mistaken deprivations of property ...
>
> Congress ... did not intend to deprive innocent owners of their property."

Concepts of reasonableness and probable cause are the domain of the Fourth Amendment. This Court found *in United States v. James Daniel Good*, supra, that the processes of the Fourth Amendment are only the first step when the government seeks to assert ownership over seized property, and that the due process clauses of the Fifth and Fourteenth Amendments also apply.

In the present case, the government indeed seeks to assert ownership over Petitioner's money. Petitioner's animals were seized and returned.

Petitioner's money, for the costs of seizure, was deprived with permanent intent.

The Fourth Amendment deals with seizure, or taking. The Fifth and Fourteenth Amendments deal with deprivation, or keeping.

The reasonable belief of the seizing officer is only the first test, and under *United States v. James Daniel Good*, supra, such tests of the Fourth Amendment are not enough to satisfy due process to permanently deprive someone of property, so due process requires something more than probable cause or reasonable belief.

Under *United States v. James Daniel Good*, supra, the innocence of the owner matters.

THE PRESENT CASE

The present case concerns California Penal Code section 597.1, which permits criminal prosecution for alleged failure to care for animals alongside a separate hearing process to determine the fate of the animals as well as who shall be liable for the costs of seizing the animals.

If the owner is held liable for the costs of seizure, this stands beyond any lien upon the animal, and is a personal debt to the State.

Holding one liable for these costs of seizure does not constitute in rem civil forfeiture, as discussed in *United States v. Ursery* 518 US 267

(1996), because the money to be paid for the costs of seizure is not the property as a legal fiction used in a crime. The costs assessed are for restitution, and they are calculated after any alleged incident, as a function of what the seizing agency determines to spend on the animals seized, for their boarding and care.

Whether the animals themselves would be the property as a legal fiction in an alleged crime is a separate issue. We submit that they would not be, for their existence does not further the alleged crime of a failure to care for them. This is not a dog bite case. In any case, neither the animals themselves nor their assessed value is at issue in this case. The animals were returned to Petitioner, but Petitioner was held liable by the administrative hearing officer for the costs of their seizure.

In determining who shall be liable for the costs of seizure, the administrative hearing officer conducted a hearing solely to determine if the seizing officer had a reasonable belief that he should seize Petitioner's animals, and did not consider objectively whether the animals were actually in need of seizure, or whether there was actually any violation of any law.

The California Court, in the opinion from which we appeal, found that this administrative hearing need only determine the reasonable belief of the seizing officer, rather than a hearing as to the "actual condition" of the animals or whether the seizure was actually necessary or whether there was any actual violation.

The administrative hearing officer never found that Petitioner violated any law, not by proof beyond a reasonable doubt, not by clear and convincing evidence, not by a preponderance of the evidence, not by any criminal or civil standard. The innocence of Petitioner remains whole under both criminal and civil standards.

The administrative hearing officer simply found that the seizing officer had a reasonable belief that seizure was necessary. Such a finding is merely a first step, and does not satisfy the process due.

The State provides Petitioner no further hearing process.

The ruling of the California Court in the present case is the precise equivalent of allowing the State to sue suspects who have not been found guilty, for the costs of their arrest, and imposing such costs at a preliminary hearing, upon a showing of probable cause alone.

The opinion of the California Court was written with a decided slant in favor of the incorrect testimony of the seizing agency, with whom Petitioner had already been involved in a dispute. The California Court cited California precedent by which the appeal Court could "view all factual matters in the light most favorable to the prevailing party, resolving all conflicts and indulging all reasonable inferences from the evidence to support the judgment."

The California Court opinion thus ignores the favorable testimony of four veterinarians in favor of Petitioner, with no veterinary testimony to contradict these four experts.

Indeed, the veterinarian the seizing agency itself hired to make its case against Petitioner instead testified favorably for Petitioner, stating that the condition of Petitioner's animals was "good", that they seemed to be in "good nutritional condition", that "their coats were clear, shiny", that they showed no signs of abuse or cruel treatment or malnutrition or deprivation of water (Record of the Case: Transcript of Proceedings, Vol. I, pages 33-34 and 59-60).

So, the facts cited in the California Court opinion are false and do not reflect a fair reading of the administrative record. And, by forming its opinion by indulging all reasonable inferences in favor of the prevailing party, the burden of proof at the appellate level was further prejudiced against Petitioner, and further deviated from the proper civil standards, denying Petitioner a fair process of appeal.

The California Court used this standard of review because they determined that a fundamental right of Petitioner was not at issue, in spite of the fact the Petitioner's money was at issue, and Petitioner has a fundamental property right to her money, under the Fourteenth Amendment to the United States Constitution.

In the present case, the State held Petitioner liable for $28,344.84, the costs of seizure and impoundment of all of the animals in Petitioner's kennel. Petitioner's animals were returned, upon the separate determination of the hearing officer that Petitioner could indeed care for them.

IMPACT

Petitioner first was provided only a preliminary test at hearing. Petitioner next was provided a biased appellate test. Both tests are substandard to the process due upon deprivation of property by the State.

The test of reasonable belief considers only the ex parte mindset of the seizing officer, ignoring any objective consideration of the facts at issue. This test is wholly insufficient to constitute a fair and full hearing. This is shortcut jurisprudence which provides that if an officer had a reasonable belief, that is the end of the debate, and if the officer's belief was wrong, so what?

This Court must not tolerate this injustice. This Court must stop this type of injustice before it further spreads. This case must be heard, because of the intrinsic importance of innocence, and of property rights, and of fundamental fairness, without which we have no occasion to consider any other principles of law.

The shortcut jurisprudence from which we appeal is so fundamentally shocking that to abide it

is to abide a crime not only against an individual but a crime against our system and our values and our nation.

Petitioner moves for this Court to vacate the order denying our Petition for Writ of Certiorari, entered on February 19, 2008, and moves for this Court to grant that Petition, on the grounds contained herein and on the grounds contained in that Petition.

(The California Court opinion and denial of review from which we appeal are exhibited with our Petition for Writ of Certiorari as Appendices A and B. The Penal Code section at issue is exhibited as Appendix C. The opinion of the administrative hearing officer can be found in the Record of the Case: Transcript of Proceedings, Vol. II, page 611).

DOES INNOCENCE MATTER?

The Chief Justice of this Court, John G. Roberts, Jr., wrote an article for the October 2, 1995, issue of the journal *Legal Times*, entitled, "Forfeitures: Does Innocence Matter?"

In that article, Mr. Roberts considered a case which was about to be heard by this Court, concerning a vehicle co-owned by a husband and wife, used by the husband to pick up a prostitute for sexual activity, and thus declared a nuisance vehicle by the State of Michigan and forfeited by the husband, but thus forfeited also by its co-owner, the innocent wife.

Mr. Roberts explored the question of whether the lack of complicity of the wife, at home and not picking up any prostitutes, mattered, such that she lost the value of her stake in the forfeited vehicle. Did her innocence matter?

Mr. Roberts wrote, "The question remains, however, what Mrs. Bennis was supposed to do here to protect her interest in the car: Remind Mr. Bennis not to use the car to pick up prostitutes, even though she had no knowledge that he planned to do so?"

In the case before this Court which resulted from that incident, *Bennis v. Michigan* 516 US 442 (1996), this Court found that such forfeitures and their results are "too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced". According to this Court, Mrs. Bennis' husband's guilt was enough, and Mrs. Bennis' innocence did not matter.

In the present case, the issue is slightly shifted. Petitioner is not the co-owner of a kennel where a crime was found to have occurred, subjecting the animals to forfeiture or subjecting the funds of the kennel owner to forfeiture in the amount of the costs of seizure of those animals.

Instead, in the present case, we deal with the forfeiture of such funds from Petitioner where no crime has ever been found to have occurred.

Four veterinarians provided testimony in favor of Petitioner, with no veterinary testimony to contradict these four experts. The administrative hearing officer found only that the seizing officer had

a reasonable belief, and did not find that there was any actual violation.

Petitioner's actions led not to any crime; there was merely the belief in one officer's mind that a crime might have occurred. Petitioner's actions led not to any adjudicated violation, by any criminal or civil standard, which would have legally permitted any forfeiture.

Under the scam of shortcut jurisprudence, where only the belief of the seizing officer is adjudicated, the mistaken officer could come back and seize Petitioner's animals over and over, and Petitioner would be liable to pay for the officer's mistake every time, with no actual violation ever adjudicated.

Under the scam of shortcut jurisprudence, Petitioner could do everything right and be perfectly innocent and still be liable over and over for the mistaken beliefs of a seizing officer.

The question remains, what was Petitioner supposed to do: Educate the seizing officer that her animals were well and in normal conditions, as affirmed by the four veterinarians offering supportive testimony, with no veterinary testimony to contradict them, even though Petitioner had no knowledge that the seizing officer planned to seize?

What was Petitioner supposed to do to avoid a mistaken belief in the mind of the seizing officer? What more could Petitioner do than be innocent?

What more can any innocent person do than be innocent?

How can America abide its innocent citizens paying the government for crimes that never happened?

In the case of Mrs. Bennis, at least someone had been found by some standard to have violated something.

Whereas Mrs. Bennis of Michigan suffered for the actual adjudicated crime of her husband, Petitioner suffers for no adjudicated crime, only for the adjudicated reasonable belief of a crime, the reasonable belief of a violation in the mind of one inexpert officer, merely a preliminary step in an incomplete adjudication.

We ask now Chief Justice Roberts and this Court, when property is subject to forfeiture, and no crime has actually been found by any standard: Does innocence matter?

If not in such a case, then does innocence ever matter?

Respectfully submitted,

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CERTIFICATE OF PETITIONER

Petitioner certifies that this Petition for Rehearing is based upon substantial grounds not previously presented, and is presented in good faith and not for purposes of delay.

Charlotte Spadaro

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